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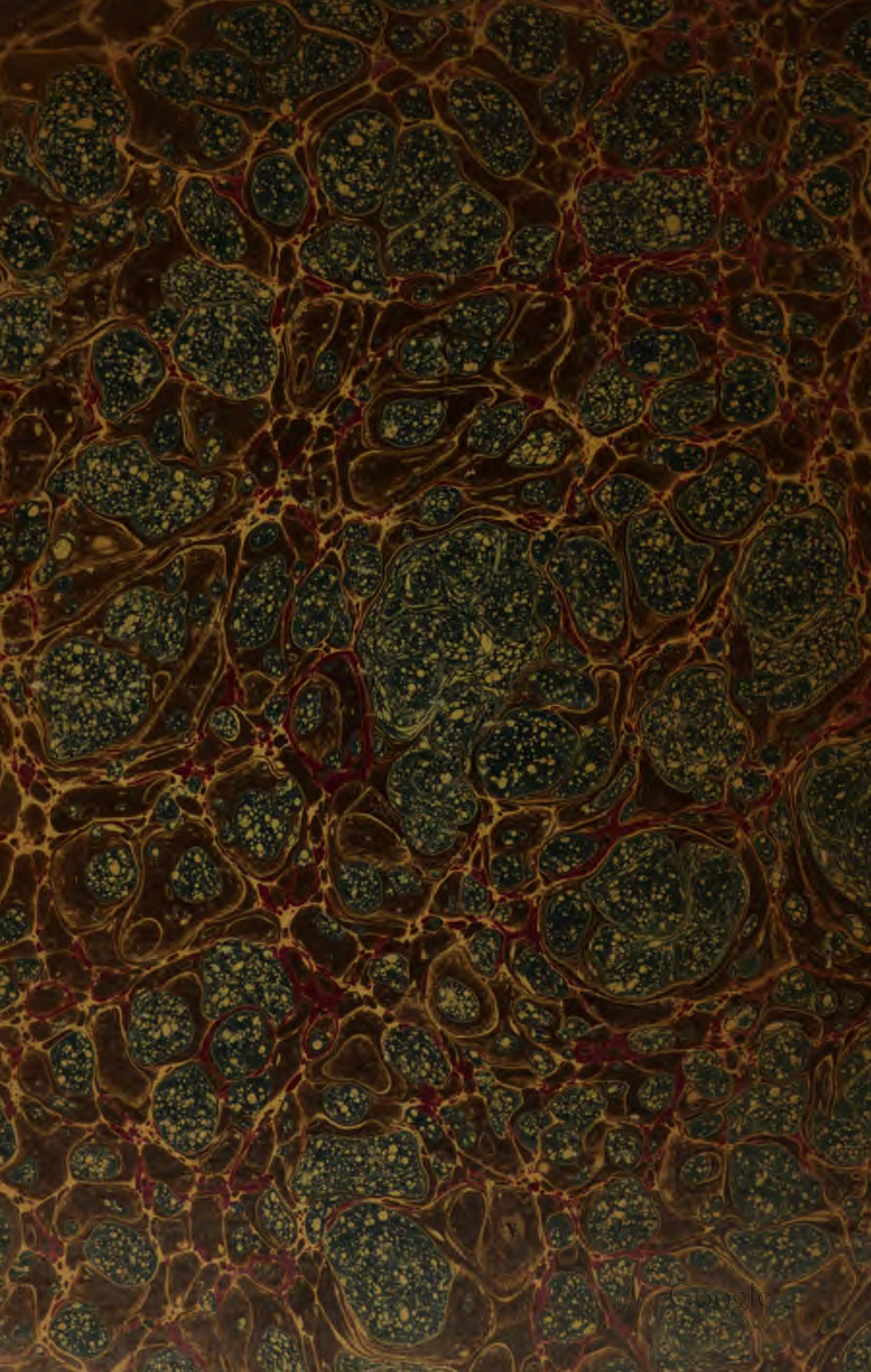
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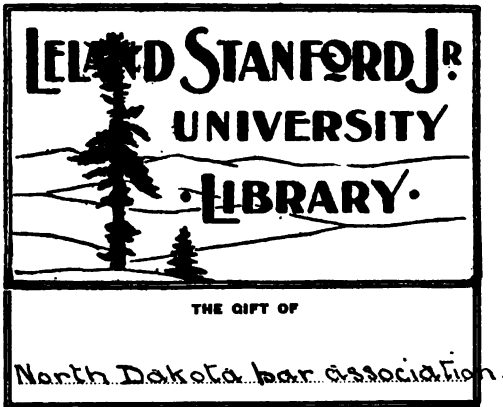
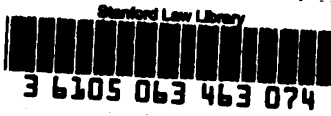
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PROCEEDINGS

OF THE

North Dakota Bar Association

FROM

ITS ORGANIZATION, SEPTEMBER 19, 1899 TO AND  
INCLUDING THE ANNUAL MEETING OF SEPTEMBER 21, 1904, WITH ADDRESSES, CONSTITUTION, BY-LAWS, LIST OF OFFICERS, COMMITTEES, MEMBERS, ETC.

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*Compiled and Edited by W. H. THOMAS, Secretary*  
*By Order of the Association*

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BISMARCK, N. D.  
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1905

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OFFICERS

OF THE

BAR ASSOCIATION OF NORTH DAKOTA FOR THE  
YEAR 1904-1905

President, H. A. Libby.....Park River  
Vice President, John Carmody.....Hillsboro  
Secretary-Treasurer, W. H. Thomas.....Leeds

75832



## COMMITTEES

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### LEGAL EDUCATION AND ADMISSION TO THE BAR.

HON. GUY C. H. CORLISS, Grand Forks.  
HON. W. S. LAUDER, Wahpeton.  
HON. JOHN S. WATSON, Fargo.  
HON. TRACY R. BANGS, Grand Forks.  
HON. E. R. SINKLER, Grafton.

### JURISPRUDENCE AND LAW REFORM.

HON. SETH NEWMAN, Fargo.  
HON. W. J. KNEESHAW, Pembina.  
HON. S. J. FISK, Grand Forks.  
HON. J. E. GRAY, Grafton.  
HON. HENRY VICK, St. Thomas.

### DISBARMENT.

HON. GEORGE W. NEWTON, Bismarck.  
HON. R. M. POLLOCK, Fargo.  
HON. JOHN BURKE, Devils Lake.

### EXECUTIVE COMMITTEE.

HON. H. A. LIBBY, Park River.  
HON. JOHN CARMODY, Hillsboro.  
HON. R. M. CAROTHERS, Grand Forks.  
HON. P. J. MCCLORY, Devils Lake.  
HON. C. L. BRADLEY, Wahpeton.  
HON. S. E. ELLSWORTH, Jamestown.  
HON. F. H. REGISTER, Bismarck.  
HON. E. H. GORDON, Langdon.  
HON. JOHN E. GREENE, Minot.  
MR. W. H. THOMAS, Leeds.





## OFFICERS SINCE ORGANIZATION

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### PRESIDENTS OF THE BAR ASSOCIATION SINCE ITS ORGANIZATION.

HON. SETH NEWMAN, Fargo.....1899-1902  
HON. JAMES H. BOSARD, Grand Forks.....1902-1904  
HON. H. A. LIBBY, Park River.....1904-

### VICE PRESIDENTS SINCE ORGANIZATION.

HON. JAMES H. BOSARD, Grand Forks .....1899-1902  
HON. M. H. BRENNAN, Devils Lake.....1902-1904  
HON. JOHN CARMODY, Hillsboro.....1904-

### SECRETARIES SINCE ORGANIZATION.

W. J. BURKE, Bathgate.....1899-1902  
W. H. THOMAS, Leeds .....1902-

### TREASURERS SINCE ORGANIZATION.

R. W. S. BLACKWELL, LaMoure.....1899-1902  
W. H. THOMAS, Leeds.....1902-





SETH NEWMAN.



## SETH NEWMAN

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Mr. Seth Newman commenced the study of law in 1857 in Buffalo, N. Y., with Honorable Horace Boies, late Governor of Iowa, and was admitted to practice in all the courts in New York at the general term of the supreme court of Buffalo in the fall of 1860.

In 1861 he commenced practice with Governor Boies in New York, and soon after removed to Iowa where he engaged in practice and in 1882 came to Fargo where he formed a law partnership with Vincent S. Stone under the firm name of Stone & Newman.

Upon the death of Mr. Stone in 1891, the firm of Newman & Resser was formed which continued until 1893, when it was succeeded by the firm of Newman, Spalding & Phelps and in 1898, Mr. Phelps having withdrawn, the firm of Newman, Spalding & Stambaugh succeeded to the business and continued until November, 1904, when that firm was dissolved and the firm of Newman, Holt & Frame was organized.

The several firms with which Mr. Newman has been connected have always occupied a leading position at the bar of the state.

Mr. Newman was the author of the law changing the method of trial of equity causes, now known as section 5630 of the codes, under which equity causes are reviewed on appeal on the merits and final judgment rendered instead of being reviewed on error and new trial granted.

He is also the author of the law levying a perpetual tax for the support of the higher educational institutions of the state under which the necessity for biennial appropriations for the support of these institutions has been avoided, and which has worked very satisfactorily and furnished a sufficient income for all the higher educational institutions, placing them on a substantial and prosperous basis.

On the organization of the State Bar Association, he was unanimously elected president and twice re-elected to the position, and at the close of his third term declined a re-election.

Mr. Newman has been identified with much *important litigation* in the state, particularly that involving constitutional questions, and was counsel for the state treasurer in the suit brought to test the constitutionality of the various statutes under which the educational institutions of the state were authorized to issue bonds to the amount of \$750,000, hypothecating the income from the public lands granted them by congress for their payment, and was successful in establishing the unconstitutionality of such legislation. He has for many years enjoyed a large practice in the supreme court of the state and enjoys an enviable reputation at the bar.

## ORGANIZATION MEETING

SEPTEMBER 19, 1899.

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Pursuant to a request of the Fargo Bar Association and at the request of Honorable Seth Newman, representing the said Fargo Bar Association, an informal meeting of the members of the bar of the state of North Dakota, was held at the court house in the city of Grand Forks on the 19th day of September, 1899, at the hour of 12 o'clock noon, of said day, for the purpose of talking over the advisability of forming a state bar association, and at said meeting so held J. H. Bosard of Grand Forks was elected chairman and W. J. Kneeshaw of Pembina, secretary.

On motion of J. E. Robinson, seconded by John Carmody, resolved that the members of the bar here present form themselves into a state bar association to be known by the name of the Bar Association of North Dakota.

On motion resolved that a committee of five be appointed by the chairman, of which the chairman and secretary of this meeting shall be two of said committee, to draft a constitution and by-laws of said association and to report the same at an adjourned meeting of the bar, to be held at an adjourned session this evening at 8 p. m. The chairman appointed Mr. Guthrie, Mr. Newman and Mr. Rose as said committee.

The following members of the bar of the state of North Dakota were present at said meeting:

J. H. Bosard, J. E. Robinson, John M. Cochrane, C. F. Templeton, M. H. Brennan, Charles D. Kennedy, Byron L. Shuman, W. R. DePuy, Jeff M. Myers, John Carmody, B. G. Skufason, R. W. S. Blackwell, Joseph G. Forbes, Charles E. Wolfe, F. B. Feetham, W. J. Kneeshaw, Leonard A. Rose, H. A. Libby, E. R. Sinkler, Seth Newman, Siver Serumgard, J. P. Galbraith, R. M. Dickson, W. M. Anderson, P. G. Swenson, E. E. Cassels, Tracy R. Bangs, George W. Freerks, A. J. Bessie and Joseph Cleary.

On motion the meeting adjourned, to meet at the same place at 8 p. m.



Met pursuant to adjournment at 8 p. m. Called to order by Chairman J. H. Bosard.

The committee appointed to prepare and present the constitution and by-laws, reported a constitution and by-laws as follows, and the same were read at the meeting and on motion were unanimously adopted:

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## CONSTITUTION.

### ARTICLE I.

The name of this organization shall be "The Bar Association of North Dakota."

### ARTICLE II.

The object for which this association is formed is:

First. To maintain the highest standard in the profession.

Second. To promote professional fellowship.

Third. To aid in securing good government.

Fourth. To keep inviolate the present high standard of the judiciary.

### ARTICLE III.

All members of the bar of this state, in good standing, shall become members of this association, who shall be accepted by the executive committee, and shall have paid the sum of \$5 as a yearly fee, provided that all persons who shall pay the fee and sign this constitution during the September, 1899, session of the supreme court, shall become members without any further act; and provided further that the judges of the supreme and district courts shall become members upon signing this constitution.

### ARTICLE IV.

The officers of this association shall be a president, vice-president, secretary and treasurer, who shall hold their office until the next annual meeting of this association succeeding thereafter.

## ARTICLE V.

The executive committee shall consist of the officers of this association, and one person from each judicial district, who shall be appointed by the president.

## ARTICLE VI.

The duties of the officers of this association shall be such as usually devolve upon like officers in parliamentary bodies.

## ARTICLE VII.

The duties of the executive committee shall be such as may be from time to time imposed upon it by law.

## ARTICLE VIII.

This constitution may be amended at any annual meeting, by a majority vote upon amendments which have been suggested at a previous annual meeting thereof.

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BY-LAWS.

SECTION 1. MEETINGS. The association shall meet at least once in each year, at such time and place as shall be designated for that purpose by the executive committee. The secretary shall send notice of the time and place so selected, to each member, by mail, at least ten days before the date of meeting.

SEC. 2. Each member shall pay \$5 annually, as dues, and when in default thereof for six months shall be dropped from the roll.

SEC. 3. The executive committee shall make all necessary arrangements for the meetings of the association, and provide in their discretion for its entertainment, prepare programs of its proceedings, audit all bills against the association, and perform such other duties as may be required by the association.

SEC. 4. The treasurer shall receive all moneys due the association and pay out the same on the order of the president and secretary, authorized by the executive committee, and shall give a surety company's bond in the sum of one thousand dollars, the expense of the same to be paid by the association.

SEC. 5. These by-laws may be amended at any time, by a majority vote of the members present at any regular meeting of the association.

SEC. 6. The secretary of this association shall receive an annual salary of \$100.

On motion the meeting proceeded to elect officers for the ensuing year and the following officers were elected:

Seth Newman of Fargo was elected president by acclamation.

J. H. Bosard of Grand Forks was elected vice-president by acclamation.

W. J. Burke of Bathgate was elected secretary by acclamation.

P. J. McClory of Devils Lake and R. W. S. Blackwell were nominated for treasurer and R. W. S. Blackwell having received a majority of all votes cast, was declared duly elected treasurer.

On motion meeting adjourned sine die.

J. H. BOSARD,  
President.

W. J. KNEESHAW,  
Secretary.

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#### MEETING OF EXECUTIVE COMMITTEE.

Fargo, North Dakota, December 5, 1899.

Pursuant to the call by the secretary of this association, the executive committee of the bar association of North Dakota, met at the chambers of Judge Pollock in the court house in the city of Fargo, at 10 o'clock, a. m.

Present: Seth Newman, J. H. Bosard, E. S. Ellsworth, F. W. Ames and W. J. Burke.

Moved by J. H. Bosard and seconded by Mr. Ellsworth that the secretary of the association be instructed to have 500 copies of the constitution and by-laws printed, the same to be paid out of the funds of the association when collected. Motion put and carried.

Moved by J. H. Bosard that the secretary of the association be authorized to have blank applications for membership printed, and to send the same together with a copy of the constitution and by-laws to all of the members of the bar within this state, inviting them to become members. Motion carried.

Moved and seconded that the actual necessary expenses of the executive committee in attending the called meeting of the committee be paid. Carried.

Moved and seconded that the next meeting of the association be held at Fargo at Judge Pollock's chambers in the court house, on Friday the 29th day of December at ten o'clock a. m., and that the secretary of the association notify each of the members of the executive committee. Carried.

Moved and seconded that we adjourn.

W. J. BURKE,  
Secretary.

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#### MEETING OF EXECUTIVE COMMITTEE.

At an adjourned meeting from December 5, 1899, of the executive committee held at the chambers of the Hon. Charles A. Pollock in the court house of Cass county, Fargo, on Friday, December 29, 1899, there were present Mr. Newman, Mr. Blackwell, Mr. Corliss, Mr. Ellsworth, Mr. Libby, Mr. Register and Mr. Bosard.

On motion of Mr. Bosard, Mr. Newman was elected chairman of the executive committee and Mr. Burke secretary. In the absence of Mr. Burke, Mr. Bosard was elected secretary for this meeting.

Mr. Corliss moved that the members of the executive committee be allowed their railroad fare and hotel bills in attending the meetings of the committee, except committee meetings held at the same time as the regular meetings of the association; and that the orders for the payment of such expenses be drawn by the secretary and signed by the president upon the certificate of the chairman and secretary of the executive committee that such member was present at any meeting of said committee, and stating the amount of railroad fare and hotel bills which said member was allowed.

This motion was duly seconded by Mr. Ellsworth and was passed.

Mr. Corliss moved that a meeting of this association be held in the city of Fargo at eleven o'clock in the forenoon of Monday, preceding the first day of the session of the supreme court to be there held in the month of March, 1900. This motion was seconded by Mr. Libby and was duly passed.

Mr. Corliss moved that Mr. Newman and Mr. Bosard be appointed a committee to make all necessary preparations, including program, for the next meeting.

Mr. Libby moved an amendment that Mr. Corliss be added to said committee and that the president be authorized to add to said committee others in his discretion. The amendment was seconded by Mr. Register and was adopted and the motion as amended was then passed.

The following bills were presented and, on motion duly made, allowed and ordered paid:

Mr. Blackwell for treasurer's bond.....	\$ 5.00
Walker Bros. for printing.....	11.75
Mr. Burke for disbursements, for printing envelopes, etc.....	11.00
<hr/>	
Total .....	\$27.75

The following memorandum of expenses of members of the executive committee attending meeting of December 5, 1899, at Fargo, was presented and on motion duly allowed and ordered paid:

Mr. Ellsworth .....	\$ 7.05
Mr. Burke .....	10.20
Mr. Bosard .....	6.00

And the following memorandum of expenses of members of executive committee attending meeting held at Fargo on the 29th day of December, 1899, was approved as follows:

Mr. Blackwell .....	\$10.75
Mr. Register .....	12.00
Mr. Libby .....	78.30
Mr. Corliss .....	6.00
Mr. Ellsworth .....	7.05
Mr. Bosard .....	6.00

Thereafter the committee adjourned to meet at the call of the president.

J. H. BOSARD,  
Secretary pro tem.

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MEETING OF EXECUTIVE COMMITTEE.

Fargo, North Dakota, March 26, 1900.

The executive committee of the Bar Association of North Dakota met at Masonic Hall in accordance with the call theretofore made, on March 26, 1900. There were present at such meeting the president, Mr. Newman, Mr. Bosard, Mr. Blackwell, Mr. Burke, secretary, Mr. Ellsworth, Mr. Libby and Mr. Ames.

The names of all the members who had sent in the membership fee and had requested the secretary to sign their names to the constitution were read by the secretary, and it was moved and seconded that the names as read by the secretary be accepted as members, with the exception of Taylor Crum of Fargo. Motion was carried.

It was then moved by Mr. Bosard and seconded by Mr. Ellsworth that the executive committee recommend to the bar association when it met the appointment of a committee of five "On Legal Education and Admission to the Bar."

It was moved by Mr. Bosard and seconded by Mr. Ames that the executive committee recommend to the association that they appoint a standing committee of five on "Jurisprudence and Law Reform."

It was moved by Mr. Burke that the executive committee recommend to the association that the president of the association, with the advice and consent of the executive committee, appoint these standing committees. Which motion was duly carried.

It was moved by Mr. Bosard that we request the association to hold its annual meeting in September of each year, which was seconded and carried.

Moved by Mr. Libby that we recommend to the association that the president appoint three delegates to the American Bar Association that meets in August at Saratoga, N. Y.

The executive committee then adjourned to meet with the association.

The executive committee met in session after the adjournment of the association, a quorum being present, and the names of all who had signed the constitution and paid the admission fee were read, and it was moved by Mr. Libby and duly seconded that the names be accepted, which was carried.

Mr. Crum had communicated with the executive committee that he desired to be heard before being expelled from the association. It was moved and seconded that the secretary be instructed to inform

Mr. Crum that when he became a member of the local bar association of Cass county, the executive committee of the Bar Association of North Dakota would recommend his admission.

The following bills were then audited and allowed as follows:

R. W. S. Blackwell, exchange paid on checks....	\$ 3.00
W. J. Burke, postal cards, circular letters, postage, printer's bill, express, etc.....	29.85
Messrs. George Pirie & Co., 120 plates at banquet	187.50
Walker Bros., printing programs.....	17.50
Walker Bros., printing programs of association..	4.00

W. J. BURKE,  
Secretary.

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#### MINUTES OF MEETING OF BAR ASSOCIATION OF NORTH DAKOTA.

Masonic Hall, Fargo, N. D., March 26, 1900.

Pursuant to a call of the executive committee the bar association met at Masonic Hall, Fargo, at 10:30 a. m. on March 26, 1900. Present in the chair, Hon Seth Newman, president, who called the meeting to order and requested the secretary, Mr. W. J. Burke, to read the minutes of the last previous meeting.

The minutes of the previous meeting were read and approved.

The report of the executive committee was then read to the association by the secretary. It was then moved and seconded that in accordance with the request of the executive committee a committee of five be appointed on "Legal Education and Admission to the Bar," which committee should be appointed by the president. Motion carried.

Moved by Mr. Winterer that the report of the executive committee requesting a committee to be appointed by the president of this association on "Jurisprudence and Law Reform" be adopted. Which motion was duly carried.

Moved by Mr. Bosard that the report of the executive committee as to the annual meeting be adopted. Moved by Mr. Baldwin as an amendment to the motion that the annual meeting be held in March. The amendment was put and carried.

Meeting adjourned to 2:30 p. m.

Association reassembled.

Motion was made that we reconsider Mr. Baldwin's amendment, which was carried.

It was then moved as a substitute by Mr. Pollock that the executive committee call two meetings of the association each year, and for the purpose of amending the constitution and for the election of officials the fall meeting should be considered the annual meeting. After considerable debate the motion was put and carried by 22 to 11.

It was then moved that we proceed to the regular order of business as outlined by the program.

The first order of business on the program was the president's address. Mr. Newman then delivered his address.

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#### PRESIDENT NEWMAN'S ANNUAL ADDRESS.

##### *Gentlemen of the North Dakota Bar Association:*

It has been thought advisable by your committee, following the precedents of other bar associations, to require from the presiding officer of this association, at its meetings, suggestions such as may occur to him suitable to the occasion, and pertinent to the purpose of the organization. In casting about for some theme which might possibly be of interest to you, I have thought it germane to direct your attention to the reasons for the existence of an association of this character, to inquire the purpose of our organization, what we expect to accomplish by organized effort, whether we have an object and what it is.

We are one of a large number of like organizations in the United States, which are represented in national associations, and these in turn are in close communication with an international association, bringing into touch a very large portion of the legal profession among English speaking people, all with the avowed object of improvement in the laws, and in the methods of court procedure, by securing uniformity in legislation, simplifying procedure and seeking methods for facilitating the business of the courts.

In the formation of this association you have designated in its constitution as purposes to be attained by its organization "the maintenance of the highest standard in the profession, the preserving inviolate the present high standard of the judiciary, and the obtain-



ing of good government." How are these purposes to be accomplished? They presuppose some work to be done, some organized effort along well defined lines, some ideal to be attained. They suggest imperfection in the present condition and relations of the profession—defects in government and in the methods of the administration of justice—a consciousness that there is something higher and better—an ideal standard to which we aspire, and toward which we hope to lift up the real. Justice, whose votaries we profess to be, is in its essence an ideal conception, nowhere fully attained, or perfectly exemplified, yet it is that which every lawyer in his humblest efforts is unconsciously and unceasingly seeking, and which it is the highest and purest ambition of all courts to dispense.

The world's progress is an effort to reach and grasp the ideal, something beyond and superior to the actual. The struggles of men in all ages have been impelled by conceptions of better and higher forms of life, and a desire to possess and enjoy them.

The great jurists and lawyers of the English speaking people have all striven to reform and improve the methods of administering justice, have all had a conception of better forms and processes. The men who established our free institutions on the basis of a written compact between and among the people were themselves idealists and builded better than they knew. The constitution which they framed for three millions of people, with its reservations of sovereign power to the several states, its grants of authority to a national central government, composed of three co-ordinate departments, with its checks and balances, its restrictions and limitations, has withstood the strain of an undreamed of expansion and preserved and transmitted to seventy-five millions of people the blessings of the institutions which it established.

Chief Justice Marshall, when he interposed the judicial power to prevent the invasion of the domain of one department of government by another, and save the great structure from destruction, by declaring that the constitution of the United States was the supreme law of the land, in fact as well as in name, pictured in his thought an ideal nation, which has since become the real—a government by the people, in which they had voluntarily, by solemn written compact, protected themselves from themselves—and provided a barrier which should, through all time stand as a fortress against the assaults of their own hasty action, and against political and partisan passions

and prejudices. By that decision he made the Federal courts the conservators of the liberties of the American people, and courageously established the line of demarcation between the functions of the legislative and judicial power of the nation.

"I do not know," said Rufus Choate, "that I can point to one achievement in American statesmanship, which can take rank for its consequences of good before that single decision of the Supreme Court, which adjudged that an act of the legislature contrary to the Constitution is void, and that the judicial department is clothed with power to ascertain the repugnancy and pronounce the legal conclusion. That the framers of the Constitution intended this to be so is certain, but to have asserted it against congress and the executive, to have vindicated it by the easy, yet adamant demonstration than which the reasoning of mathematics show nothing surer, to have inscribed this vast truth of conservatism upon the public mind, so that no demagogue, not in the last stage of intoxication, denies it, this is an achievement of statesmanship of which a thousand years may not exhaust or reveal all the good."

Inspired by the precedents before us, we may surely build lofty ideals of our profession, and seek their attainment. And this suggests the inquiry—Is the legal profession abreast the advancement in thought, methods and activity which characterizes the closing days of the nineteenth century—a century which can be compared in all that makes for human progress, all that tends to the amelioration of the burdens and the enhancement of the benefits of life, with no other, and a true conception of which demands the contemplation of all past time?

A hundred years ago the experiment of a representative government under a written constitution was in its infancy, and the divine right of kings had hardly been questioned.

While English historians trace the existence of representative government from the Witengamote of their remote ancestors, through all stages of the evolution of the English nation, yet such a government, based on a written contract, was an untried experiment.

Universal free education had not yet been even a dream. Conservatism reigned supreme. The stimulus of equal rights and opportunities, under free institutions, the sanction of law, and the protection of constitutional guarantees, had not yet awakened the

human mind to its power, and the vast possibilities which lay before it. We had harnessed the horse, yoked the ox, stretched the canvass athwart the breeze, and utilized the force of gravity, and with these forces were content to supply our limited wants. The limitless power dormant in the coal mine and forest was yet unknown and untouched. The flash of the lightning was still the manifestation of divine displeasure, instead of the display of a beneficent force waiting the commands of man to revolutionize the methods and industries of the world. In commerce, in the problem of transportation, weeks and months then stood in the place of hours and days now. In communication, the intimation that the voice of man could be heard and recognized from ocean to ocean would then have been accepted as conclusive evidence of grave mental hallucination. Our industries were few and laborious and our methods primitive.

But within the century, in fact almost within our own memory, scientific investigation and the application of scientific truths and methods to the affairs of life, have revolutionized this. Brain, instead of muscle, has become the chief and potent factor in all human activity, and in the perfection and prosecution of all industry. Aggregation of capital, combination and co-operation of forces, have supplanted individual effort. Organization and specialization have taken the place of diffused and inefficient energy.

In the curative art the revolution wrought by the development of scientific art has been complete. The physician or surgeon who would now resort to the methods in vogue a century ago, would speedily receive the attention of the legal profession and the courts in the adjustment of demands for damages.

In theology, the dark and gloomy doctrine of the wrath and vengeance of offended Omnipotence has been dispelled by the kindly light of the life of the great Master, softly shining through the centuries, and gently touching the soul of man, with the satisfying spirit of the gospel of infinite love and perfect peace.

The legal profession stands practically alone in conservatism and lack of organization, pursuing practically the methods of the close of the eighteenth century in the administration of the law, without combined effort looking to any definite changes. It is true we have eliminated form, codified procedure, and attempted to give

legislative sanction to the "unwritten law," but the "law's delay" is still proverbial, and the reproach of technicality still persists.

Is there no remedy? Are our present methods the only and best that can be devised? Must we, in these United States, for all time continue to employ fifty courts of last resort in searching for and correcting the alleged errors of inferior tribunals, instead of directly administering justice between the parties?

These are questions I do not expect to answer, but only to suggest a few exceedingly crude thoughts relative to them, for your consideration.

Is there a remedy? If the present laborious and unsatisfactory methods can be reformed, how shall it be done?

The subject is one to occupy the profound attention of the best trained minds in the legal profession, men of experience in practice, yet imbued with the necessity for improvement.

The remedy is not alone with the legislature. It rests with the bar and with the courts. The need is for lawyers and judges who have convictions of their own, who have a clear conception of, and a capacity to discern, the right and justice of a case, and give a reason for the faith that is in them, men of original ideas, capable of reasoning on principle, grasping the essence of the controversy, and courageously determining it, in accord with the fundamental principles of law and equity. Such have been the great lawyers and jurists in both England and America.

Courts are instituted for the interpretation and application of the law, and the administration of justice, and why not allow them to do this by providing that no judgment shall be reversed or new trial granted if the court of review shall be of opinion that substantial justice has been done between the parties in the case, under the Constitution; by permitting these courts, in fact, to determine all controversies brought before them.

The English Judicature Act passed in 1872, and in operation in England and all her colonies, provides:

"The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this act, in every cause or matter pending before them respectively, shall have power to grant and shall grant, either absolutely or in such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to

be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively, may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided."

A similar enactment, requiring possible constitutional recognition, is the only legislative aid necessary here.

We should have confidence in the courts, and vest in them the full power to perform their function of doing substantial justice among the people, under constitutional restrictions, and in the most direct and speedy manner.

Our profession must be inspired with the spirit of progress and evolution which pervades all other professions and industries, if it would facilitate the administration of justice, and give to jurisprudence the advanced position to which it is entitled in the progress of the world. We must forsake our subserviency to forms and precedents, and depend more and more upon reason and general fundamental principles.

We are told that the law is found and must be sought in written constitutions, statutes, judicial decisions and commentaries, and is a rule prescribed by the supreme power of the state, commanding what is right and prohibiting what is wrong; that it is a command, proceeding from a superior to an inferior, and enforced by a sanction. But statutes, judicial decisions and treatises upon law are numbered by tens of thousands, and the flood is ever increasing and must soon engulf us. Nearly eighty years ago Judge Story said upon this subject:

"The mass of the law is, to be sure, accumulating with an almost incredible rapidity, and with its accumulation the labor of students as well as professors is seriously augmenting. It is impossible not to look without some discouragement upon the ponderous volumes, which the next half century will add to the growing shelves of our jurists."

This great volume of law, as it is found in books, in its application to the affairs of life is but imperfectly known by the best lawyers. To this great mass of books the people generally are strangers. And yet we are told that "ignorance of the law does not excuse," and that every person is "presumed to know the law."

If it be true that the law is found alone in books, then the presumption is false and tyrannical.

But the great mass of mankind go from the cradle to the grave instinctively and by the force of natural honesty of purpose, keeping every precept of the law, and without the consciousness of a single violation. Is it not true that the man who, in good faith, obeys the dictates of a pure and honest heart, and is governed, in his intercourse with his fellow men, by the sense of right and justice graven on his conscience will, in the main, find such a course in perfect conformity to law?

That law is essentially ethical in its nature and must conform to the accepted social standard of justice, or be rejected. No act of legislation in direct conflict with this standard, no law which does violence to the public conscience, can long remain effective. It must be repealed or become a dead letter. Law is not made. It is. It exists, with its origin in the infinite, a part of that immutable principle of right and justness which harmoniously governs the universe. Great principles are not of commanding force because expressed in written form in statutes, constitutions and judicial opinions. They are thus expressed because the conscience of the people has accepted them as true. There is, back of the written expression, the sanction of public conscience, the settled public opinion of a whole people.

Does not the unwritten law in fact consist of rules emanating from the common, accepted social standard of justice, based upon the customs, habits, business and methods of thought of the people?

From the foundation of our system vast numbers of people, strangers to our laws, have flocked to our shores and become American citizens. And yet, in the ordinary business relations and transactions of life, has not their obedience to law been equal to our own, especially in those matters wherein our habits and customs coincided with theirs?

Does not the law derive its sanction and force from the progressive moral thought and convictions of the people, their deepening knowledge of their duties and nature, and their ceaselessly growing experiences in their social relations?

The definitions found in the books fitted the mechanism of the governments under which they were framed. But we are under a government of law, not men. The law institutes the government,

and declares the scope and the limitations of its power. It establishes legislative and judicial authority as instruments in its administration, and defines and limits the exercise of that authority.

Legislation and judicial decisions are, or should be, but the work of formulating generally accepted principles of right and wrong, adapting them to existing conditions, forming for the time being a system of positive law, adapted to social conditions, and perpetually changing as those conditions change. Such *must* be the case or our statute books will be filled with futile, unenforceable enactments, and the decisions of our courts will fail to command the respect of the people.

The influence of the bar in this direction can be made most potent. In fact the final form of legislative enactment is, and in the nature of things, always must be, molded by lawyers. They constitute a majority of all national legislators, and an important element of state legislation. They framed the national and state constitutions. It is their special function to participate actively in the affairs of the community. They are the active force in the councils of political parties. They draft, or revise and approve, practically all legislative bills. Their power is dominating and far reaching.

But whatever the source of law, whether it derives its sanction from legislative enactment or from the consensus of public thought, its final interpretation and adaptation to the facts of any particular transaction is for the courts, and the rules that govern all disputed and contested rights are declared by them. Your codes may be constructed by the greatest lawyers and jurists of the past and present, adopted, amended or modified by legislatures filled with the best and ablest of men, yet their interpretation and application must be left to the courts, and enforced by them, and your law necessarily becomes, in its effective force, what may be called judge-made-law—undoubtedly the best law we have, and the best it is possible to have—the work of experts and masters. And this is what renders the judiciary of such transcendent importance in our form of popular government. It is the final arbiter of all the rights of the people, civil and political, and when we consider that the judiciary must, in the nature of things, be drawn from the legal profession, that its decisions are largely influenced, and often determined by the bar, we can partially realize the responsibility

resting upon us as lawyers, a responsibility more far-reaching in its effects than that imposed on any other class of men.

We are too apt to forget that we are commissioned by the state to assist the bench in its arduous duties; that the chief function of the lawyer is to aid the judiciary—by careful preparation and conscientious presentation of cases—to arrive at a speedy and correct solution of the questions involved. And this demands not only knowledge of the law, and a broad conception of the high importance of correct results, but a general familiarity with the business and affairs of the world—a general and complete knowledge of the usage, methods and customs of men in all lines and branches of industrial and commercial activity. Lawyers and judges need to become, and are becoming, more and more men of affairs, and this is bringing into the administration of the law more and more the conciseness and dispatch characteristic of modern business methods.

The great facilitation of business in all lines has inspired the public with the idea and belief that the movements of lawyers and courts can and should be hastened, business methods introduced, and delay diminished. And it is along these lines that reform must come.

The influence of the bar can be made a most potent factor in this improvement. Its members originate all the business of the courts, conduct it through all its stages, present to the bench for adoption, the proper solution of all disputed questions, and are in fact largely responsible for the results.

A fruitful cause of delay is found in the crowding of the calendars of the courts with trivial litigation, cases which should have been settled out of court, and which are disposed of only at an expense in time and money out of all proportion to the amount involved.

Another great source of delay is the preservation of the jury system for the trial of certain classes of civil cases. It, like the grand jury, has outlived the conditions which brought it into existence. The causes which once made it beneficial no longer exist, and no valid reason can be given for its retention, except that the constitution decrees it.

You bring an action in ejectment to recover real estate and the right of trial by jury may be asserted. Bring an action on the same facts to quiet title and under our statute obtain possession,



and the case must be tried by the court without a jury. In the one, the judge is competent to decide the facts, in the other not—the object of each action is the same, the evidence the same, and the results the same.

Sue on a promissory note to which the defense is payment and a jury may be demanded as a right. Sue on the same note for the same judgment, with the same defense, and on proper allegations ask for the foreclosure of a mortgage securing payment of the note, and the right of trial by jury is lost, although precisely the same question of fact is to be determined.

If you sue to recover damages for trespass or fraud, the case must be tried by a jury. If you sue to enjoin the same trespass or fraud, the judge is competent to find the same facts without the delay, or uncertainty, or expense of a jury.

In vastly the most important cases tried in the courts, the right of jury trial does not exist, and the judge is held competent to decide all the facts.

The late Justice Bradley, of the Supreme Court of the United States, has said upon this subject:

"The important right of personal liberty is generally determined by a single judge, on a writ of habeas corpus, using affidavits or depositions for proof, when facts are to be established. Assessments for damages and benefits, occasioned by public improvements, are usually made by commissioners in a summary way. Conflicting claims of creditors, amounting to thousands of dollars, are often settled by the courts on affidavits or depositions alone. And the courts of chancery, bankruptcy, probate and admiralty administer immense fields of jurisdiction without trial by jury."

If the court is competent in the most important and complicated of all civil cases to decide questions of fact, why may it not be competent to decide similar questions in minor matters, and thus remove one of the reproaches of the law, and lighten the burden of the citizen who pays the expense?

We, in the United States, cling more tenaciously to jury trials, in the few classes of civil cases in which they are retained, than any-other nation on earth.

A reform in this respect, as in all others, rests with the bar. The influence of the profession, properly brought to bear upon public sentiment, would soon produce favorable results. We, in

this state, have beneficially dispensed with the grand jury, and our liberties are still intact.

Other defects in the administration of the law rest with the courts.

We cannot separate the law in the courts from its administration, nor its administration from the men who administer.

Frequent and vigorous dissenting opinions are evidence of the fact that judges, like other men, are subject to the influence of their individual endowments, training, learning, preconceived ideas, in fact of all the accidents of their environment. Each believes and declares the law to be what he *thinks* it is. They *think* differently. The opinion of the majority becomes the law of the case, and so the domain of jurisprudence is filled with doubt and uncertainty. A change of one man on the bench would often change the law of the state on a given subject.

With due deference to the courts I venture to call attention to the tendency to write opinions of unnecessary prolixity; opinions, the proper consideration of which taxes to the utmost the time and often the patience of the busy lawyer, and which are often essays upon the subject under consideration, rather than a plain, concise and intelligent statement of the principles applicable to the facts of the particular case.

Mr. Walter Bagehot, in his essay on Lord Brougham, speaking of the difference in judges in the matter of decisions and opinions, says:

"Great judges may be divided into two classes—judges for the parties and judges for the lawyers. The first class are men who always decide a particular case before them rightly; who have a nice insight into all that concerns it; are acute discerners of fact, accurate weighers of testimony, and just discriminators of argument. They will not bestow conclusions on after generations, but will let posterity decide its own controversies. A judge of the second class has a personal interest in what comes before him. It is, in his eyes, not a pitiful dispute whether A or B is entitled to a miserable field, but a glorious opportunity of deciding some legal point on which he has brooded for years, and on which he has a ready made conclusion; and he writes an essay, in which the particular facts are a little lost, and an exposition of the whole general doctrine fills the attention."

The remedy for defects in the courts is clear and easily applied. Divorce the selection of the judiciary from all political considerations; place on the bench only men of judicial temperament, good natural endowments, special training, adequate learning, untiring diligence, strong physical endurance, strict integrity, upright moral character, sound common sense, good judgment and long experience in the law, and keep them there, with ample compensation; then, with honest, painstaking work on the part of the bar, in the performance of its court duties, the reform is inaugurated, if not perfected. This can be accomplished by the bar. United, determined effort and an honest molding of public opinion will effect the result.

The first step in this reform and in the perfection of our jurisprudence is, as expressed in the constitution of our association, "the attainment and maintenance of the highest standard in the profession, and the determination to preserve inviolate the highest attainable standard in the judiciary."

These are some of the declared objects of our association, but not all.

We are pledged to aid in securing good government.

The framers of the national constitution, recognizing the fact that contracts are the great instrumentality by which property is acquired, and foreseeing that the state government must, in the nature of things, retain jurisdiction over the vast majority of the business transactions of the people, inserted in that instrument the unique provision that "no state shall pass any law impairing the obligation of contracts."

Borrowing from the great charter of English liberty, they also provided, "No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

These provisions express the great fundamental rights guaranteed by the national constitution, and the same guaranty of life, liberty and property is provided in all state constitutions. Thus have the people effectually protected themselves and their property from their own hasty impulses, and against the violent and casual forces which are liable to accompany political action; have established a power out of themselves, and not subject to their own control, which shall

thwart their inclinations, control their will and bring their passions into subjection.

By the Fourteenth Amendment, the inviolability of life, liberty and property is guaranteed against the attack of any department of the state government.

The late Mr. Justice Miller of the United States Supreme Court, well expresses the effect of establishing the inviolability of contracts. He says: "The result has been to make void innumerable acts of state legislatures intended in times of disastrous financial depression and suffering, to protect from the hardship of a rigid and prompt enforcement of the law in regard to these contracts, and to prevent the states from repealing, abrogating or avoiding by legislation, contracts fairly entered into with other parties."

The inviolability of the instrumentalities for the acquisition of property, and of the property acquired, is the real foundation upon which the marvelous growth and prosperity of this nation depends.

It has given full play and encouragement to all the energies and resources of the people.

Stability of property rights is the corner stone of permanent prosperity.

Speaking of the unexampled growth, power and prosperity of the American nation, a distinguished English writer generously said:

"All this beneficent prosperity reposes on the sacredness of contracts, and the stability of private property—the first the implement, the last the reward of success in the universal competition."

The threatening danger to this nation is, and always has been, the invasion of the rights of private property by the political departments of the government.

The insurrection of the slave states, which precipitated the Civil War, was based on the idea of danger to what was recognized, in the insurrectionary states, as private property, from the supposed intended action of the dominant political party.

Industrial disturbances have constituted a large proportion of the dangers which have heretofore threatened us. Fantastic theories of property rights, of taxation and kindred subjects, which, if carried to their logical results would undermine and destroy these guarantees, are continually rising like mists in the night, but fortunately, so far in our history, have found little acceptance with the people.

What is the duty of the bar in the premises? The sanction of our official oath binds us to support the constitution of the nation and of the state. Our duty as members of the community requires the same. The perpetuity of the constitutional guarantees rests with courts drawn from the ranks of our profession. So far these courts have preserved these guarantees in their original vigor. Will they continue to do so? The danger lies in the direction of executive and legislative usurpation under the stress of public clamor.

It is the highest and most sacred duty of the bar and judiciary to support and maintain in full force the constitutions of the state and nation against every legislative and executive act in violation of them. This duty is unique in history, and rests only on American lawyers and courts.

The crucial question yet unsolved is—will the courts of this country be equal, under all circumstances, to supporting the fundamental law against supposed popular demands, however vehemently or adroitly presented or urged, for legislation in violation of the constitutional guarantees of property rights.

The pressure will at times be prodigious and the temptation to yield great.

The courts must stand on the constitutional guarantees, against popular clamor, political intrigue, corporate rapacity, and all other forms of attack, however open or insidious, or our institutions are imperiled. In this they should have the full and unfaltering support of the bar under all conditions and circumstances.

The pre-eminent and imperative duty of the American bar and judiciary is, to see to it that our constitutions are enforced, their ascendancy maintained, and their guarantees made effectual in favor of every person, regardless of wealth, position or condition, and as to all rights and interests which they were devised and designed to protect.

This done, and we may transmit to those who come after us, the priceless legacy of constitutional liberty and equal opportunity bequeathed to us by the fathers, unimpaired and undiminished, with the honor of this nation untarnished, and its glory unobscured.

Mr. Blackwell followed with an address on "Expansion."

It was then moved by Mr. Bosard and seconded that a committee of five be appointed to recommend to the next meeting of the association a program for the celebration of John Marshall Day. There

were appointed on that committee as follows: Mr. J. H. Bosard, Judge C. A. Pollock, Mr. Charles F. Templeton, Mr. Serumgard and Mr. Baldwin.

The association then adjourned.

W. J. BURKE,  
Secretary.

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### MEETING OF EXECUTIVE COMMITTEE.

Grand Forks, North Dakota, September 1, 1900.

Pursuant to the call of the executive committee of the bar association to meet at the chambers of Judge Amidon at ten o'clock September 1st.

There were present at said meeting Mr. Newman, Mr. Bosard, Blackwell, Burke, Register, Ellsworth, Ames and Corliss.

Minutes of the last regular meeting were read and approved.

Moved by Mr. Corliss that the bar association hold its semi-annual meeting on September 18th, at two o'clock. (Seconded and carried.)

Moved and seconded that the committee on arrangement for program at said meeting be continued. (Bosard and Corliss on said committee.)

Moved and seconded that the affidavits filed against Mr. Voss charging him with misdemeanor in office, be referred to the committee on "Legal Education and Admission to the Bar." (Carried.)

Moved and seconded that the secretary be instructed to write all members inviting them to be present at the meeting to be held at Grand Forks, on the 18th of September, and also write the non-members inviting them to join.

Moved and seconded and carried that the salary of W. J. Burke be paid at \$100 in accordance with the constitution and by-laws.

Moved and seconded and carried that the following bills of the members of the executive committee be allowed and orders be drawn therefor. Hotel bills and traveling expenses to be allowed as follows:

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Mr. Ellsworth of Jamestown.....	\$17.00
Mr. Blackwell of LaMoure.....	16.75
Mr. Register of Bismarck .....	19.20
Mr. Ames of Mayville .....	7.00
Mr. Burke of Bathgate.....	8.50
Mr. Newman of Fargo.....	8.10

It was then moved by Mr. Bosard, which motion was duly seconded and carried, that the committee on "Education and Admission to the Bar," also act as a committee on "Disbarment Proceedings." That they adopt such procedure as may be necessary, and that they propose the legislation that may be necessary to carry out the ends and objects of this committee.

Committee on Jurisprudence and Law Reform: Seth Newman, Judge Joseph M. Bartholomew, C. F. Templeton, Roderick Rose, David Bartlett.

Committee on Legal Education and Admission to the Bar: Guy C. H. Corliss, Judge William S. Lauder, Jeff M. Myers, C. E. Leslie, John Watson.

The executive committee then adjourned.

W. J. BURKE,  
Secretary.

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## ANNUAL MEETING OF THE BAR ASSOCIATION OF NORTH DAKOTA.

Grand Forks, North Dakota, September 18, 1900.

The meeting was called to order by the president at 2:30 o'clock p. m. at the court house.

On motion of J. H. Bosard, seconded by John Carmody, Mr. A. F. Madison was elected secretary pro tempore, the secretary, W. J. Burke, being absent.

The minutes of the last meeting and the reports of the executive committee were read. The minutes were approved, and the report of the executive committee on membership which was as follows: In favor of the admission of P. M. Hanson and J. E. Blair of the University of North Dakota was approved and Mr. Hanson and Mr. Blair were duly elected members.

The executive committee reported in favor of the amendment of the by-laws, and such report was ordered placed on file for further consideration.

The committee on Jurisprudence and Law Reform reported that the legislature be petitioned to so modify the times of holding the terms of the supreme court, that the terms at Fargo and Grand Forks be each extended one week, so that there should be three weeks court at Fargo and three weeks court at Grand Forks. This report of the committee was adopted.

The committee that had been appointed to report on salaries of court stenographers and their duties, etc., made a report which was duly considered by the bar association, but no action was taken in regard thereto. The report was placed upon file.

Mr. B. F. Spalding made an oral report of the proceedings had in the American Bar Association, to which he had been sent as a delegate from this association. This report was oral and was listened to with much interest.

The report of the treasurer was received, read and approved, and ordered filed.

The committee that had been appointed to provide for the celebration of John Marshall Day, reported that said day be celebrated by the association at the city of Fargo, and that the Hon. Chas. F. Amidon, judge of the federal court, be invited to deliver an address upon that occasion; also that the legislature, presided over by the governor, by the Hon. J. M. Bartholomew, chief justice of the supreme court, and that the superintendent of public instruction of the state be invited to lay the matter before the schools throughout the state that the youth of the land might be taught something of the life and history and deeds of the great judge and lawyer, John Marshall. This report of the committee was amended by providing that the superintendents of the various city schools be also invited to co-operate, and as so amended the report was adopted.

On motion of Mr. Bosard, the election of officers, being then in order, the officers for the ensuing year were elected by acclamation, resulting in the election of the Hon. Seth Newman, president; James H. Bosard, vice-president; W. J. Burke, secretary, and R. W. S. Blackwell, treasurer.

The committee on Jurisprudence and Law Reform reported an amendment to the Practice Act in matters of appeals from the dis-



strict court to the supreme court in actions tried to the court without a jury, but said report was not adopted, but on motion of Mr. Lovell, a committee, consisting of the president, vice-president, Mr. Corliss, Mr. Engerud, Mr. Templeton, Mr. Bangs, Mr. Newton, Mr. Robinson and Mr. Ellsworth be appointed to draft a bill amending the Practice Act so as to simplify the same and to present the matter before the judiciary committees of each house of the next legislature, as a recommendation of the bar association. Such action was adopted.

The amendments to the by-laws, reported by the executive committee were then taken up and were adopted as follows:

SEC. 7. The committee on Jurisprudence and Law Reform shall receive and consider from any member of the bar of the state at any time proposed amendments to the code, and shall at each meeting of the association report what changes, if any, have been made by the legislature since the last meeting, and any modifications of the rules of practice that shall have been made by the supreme court, and in addition to such reports shall recommend such changes in the code and in the practice as shall seem to said committee to be proper and advantageous to the end of securing a proper reform of the laws.

SEC. 8. The committee upon Legal Education and Admissions to the Bar shall confer with and recommend to the faculty of the University of Law a suitable course of study to be pursued as a qualification for admission to the bar, and shall also confer with and recommend to the supreme court a standard of education and qualifications to be adhered to as a prerequisite to admission to the bar, and shall report in regard to such matters at each meeting of the bar association.

SEC. 9. COMMITTEE ON DISBURSEMENT. There shall be appointed by the president a committee of attorneys consisting of three attorneys which committee shall be permanent and which shall have the supervision of all complaints made to the association against members of the bar in the state.

No such complaint shall be investigated unless substantiated by at least two positive affidavits of the facts constituting the conduct complained of, or one affidavit and documentary evidence to support the facts charged.

Any person desiring to make or file any charges for the purpose of disbarment of an attorney, may deliver such affidavits or other evidence to the secretary or president of the association, whose duty it shall be thereupon to deliver the same to the disbarment committee. The committee shall then fix a day for the hearing of such proofs as may be produced, and it shall give the accused at least ten days' notice of such hearing and permit him to appear and produce before the committee any evidence he shall desire to submit. The investigation shall be made secretly and without any publicity whatever, except such as is necessary to procure any necessary evidence, and if the committee find that no prosecution should be commenced, they shall dismiss the matter and return the affidavits to the person from whom they received the same, who shall thereupon return them to the party making the charges, without publicity.

In case the committee find from their investigation that further investigation in court should be made, it shall be their duty to prepare and file in the office of the clerk of the supreme court an accusation in accordance with section 424 of revised codes.

## JOHN MARSHALL DAY

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Commemorative exercises on John Marshall Day, February 4, 1901, were under the direction of the North Dakota State Bar Association. Both branches of the general assembly and a large concourse of lawyers and citizens assembled at the capitol in Bismarck. Governor White presided. After an invocation and vocal selections the president introduced as the orator of the day J. M. Bartholomew, formerly chief justice of the supreme court of the state of North Dakota.

### ADDRESS OF J. M. BARTHOLOMEW.

We meet upon an occasion for which no parallel can be found. The people of the United States join hands today in paying homage to the memory of a noble man, to the works of a mighty mind. We select this, the centennial anniversary of the day upon which that man entered upon the duties of his great office, as a day well fitted to commemorate his life.

There is in our human nature an element that tends to hero worship. The military captain who amid the pride and pomp of glorious war, with undaunted personal courage and with ready and exhaustless resources leads an army to victory, commands our worship, and scarcely less he who with bold defiant utterances in senate hall or from the rostrum overcomes opposition and forces conviction even upon his opponents. With a century intervening, and understanding the unworthiness of his motives and the cruel injustice of ambitions, we yet worship as a military hero the first consul of France. A General Grant could make the circuit of this earth amid prolonged and continual acclamations because upon many a frightful field of battle he had proved himself the greatest military chieftain of his generation. An Admiral Dewey for one bold, brilliant and successful stroke in the far-away harbor of Manila was received upon his return by a nation with uncovered head and outstretched arms. Scarcely less do we worship the eloquence of a Burke, the fervor of a Webster, or the invective of a Calhoun. But he whose

memory is here revered won not his laurels on the field of battle, though he was a soldier tried and true. He won not his everlasting name in legislative halls, although a debater of singular force and persuasiveness. No, his name shall be ever immortal by reason of what he did in the seclusion of his own chambers. After days and perhaps weeks of profound reading and study he laboriously wrote out his thoughts and formulated the principles he desired to establish. No thought of applause, no thought of renown, no thought of future fame entered his mind. With singleness of purpose he sought to establish truth and justice. But in his earnestness he manifested a mind so clear, a logic so irresistible and a genius so incomparable, that, even in that age of mental giants, it was clear that as a jurist he stood without a peer. His thoughts still burn and spread, and to the principles that he announced we still turn as to an unfathomed fountain from which can be drawn the solution of every legal problem that concerns the powers or the interests of the federal government. We meet today to pay homage to that cold, unresponsive, intangible entity that we term intellectuality, but an intellectuality so grand and colossal that it will cease to be admired only when mankind ceases to be governed by reason and convinced by logic.

The review of such a life will present to the tender youth of today every inducement that leads to the highest type of the free and sovereign American citizen. And there are none among us, however low be our station, who will not by the contemplation of such a character be raised to higher planes of intellectual and moral life.

The learned orator here sketched the private, public and political life of Marshall down to the time of his appointment as chief justice, and then continued:

With the end of the administration of John Adams the government passed from the hands of the federalists. But near the close of his term, and on January 31, 1801, he appointed John Marshall as chief justice of the supreme court, and four days later—one hundred years ago today—Marshall took the oath of office and entered upon the discharge of his duties. We may not presume that either President Adams or John Marshall appreciated at the time the measureless importance or consequence of the appointment.

"God moves in a mysterious way  
His wonders to perform."

Looking backward over our history for a century, can another instance be found so clearly manifesting the controlling hand of allwise Providence? Had Chief Justice Ellsworth retained his office until March 4, 1801, John Marshall would never have been chief justice. Thomas Jefferson, strict constructionist that he was, would never have placed Marshall in that position. The opportunity was given to Adams and the man had been prepared for the place. It is no extravagance, it is but the iteration of a plain fact, to say that of all then living men John Marshall was best fitted to be chief justice of the United States. It was not the profound and astute common lawyer that was then needed. Rather it was the combination of jurist and statesman who loved his country, and his whole country, and whose mind was limited by no state lines. Who would love his country more than he who fought for its independence, than he who early declared that America was his country; and who could love the constitution more than he who exerted his every effort to bring it into operation and who had since nursed it as a tender child; and who so well fitted to correctly interpret that constitution as he who in its defense had been forced to scrutinize the meaning of its every word and line? All these conditions were happily blended in John Marshall. But Providence had not there stopped his equipment. Its greatest gift to the man was his unanswerable logic and the power that his pure, earnest, candid life gave him over men with whom he was called upon daily to associate. Most fortunate is it for us, most fortunate for this land, that John Marshall was thus gifted. Judges are but men. They go upon the bench carrying with them their existing political principles and political bias. Nearly all great constitutional questions have a direct political bearing. In their solution the judges carry with them their political principles, and are always inclined to that construction that conforms to their political views. This is no reflection upon their integrity. It simply shows the sincerity of their convictions. We have more than once in our day seen our honored federal supreme court divide practically, and sometimes exactly, upon party lines. Now, it so happened that during nearly all the thirty-five years that John Marshall was chief justice a majority of the court were opposed to him politically. Yet we find very few cases where the court divided, and no great constitutional questions when John Marshall spoke for the minority. So strong were his arguments, so

keen his logic, so great his influence, that we find judges of opposite political faith joining with him in his broad, strong, comprehensive views of the constitution. It is certain that had he possessed average powers only he would have spent most of his time in writing dissenting opinions, while the opinions of the court would have established rules of construction for our great charter that no patriot dares now contemplate. It was the conviction of John Marshall that the constitution made, and was intended to make, this country a nation complete and strong in all its parts, an indivisible nation capable of protecting itself from within and from without. To his mind no construction of the constitution was permissible that would conflict with its great purpose. He carried his associates with him. His rules of construction brought out the force and beauty of the constitution, the power and cohesiveness of the nation it created.

If I say that it was nothing but John Marshall's construction of the constitution, accepted by the people and enforced by the government, that enabled the nation to live from '61 to '65, let no one say that I give him too great praise.

Professor Bryce says of him that he was so singularly fitted for the office of chief justice, and rendered such incomparable service in it, that the American people have been wont to regard him as the gracious gift of a favoring Providence. In so saying he speaks only the truth. He further says that "his fame overtops that of all other American judges more than Papinian overtops the jurists of Rome, or Lord Mansfield the jurists of England." When it is remembered that America has produced Story, Kent, Shaw, Grier, Gibson, this language is praise beyond limit. Our own James A. Garfield said: "Marshall found the constitution paper and he made it power; he found it a skeleton and he clothed it with flesh and blood." To understand how strictly true is this picture we must go back one hundred years. The constitution had been discussed, learnedly, bitterly discussed, in conventions and legislative halls. But such discussion had only emphasized the wide diversity of opinion as to its real meaning. No important provision in it had ever been judicially construed when John Marshall donned the ermine of chief justice. The whole field was unexplored. The world had seen written constitutions, but never such as this nation had adopted. No such complex and dual form of government had ever been put into operation. The world had never seen sovereign states

theretofore disrobing themselves of so much of their sovereignty as was necessary to create another sovereignty superior to and absolutely independent of themselves, for all the purposes of its creation, yet powerless and possessing no sovereignty beyond those purposes. But the extent of those purposes, the limits of those powers, were yet to be judicially determined. The relations of these states to each other, and to the federal government, and the relation of each to the Indian tribes, were yet to be defined. The limits of the power of the different branches of the government, now so clearly marked, were then uncertain and shadowy. It was no mere figure of speech to say that the constitution was paper. It was as yet little or nothing more. Our fathers had launched a vast ship of state, but it was constructed upon no model, and all its machinery was yet to be tried, adjusted and made to work harmoniously. It was to this task that John Marshall addressed himself, and it was the admirable manner in which he performed the task that has made his name enduring.

It has often been noted and commented upon by lawyers that in his leading opinions upon constitutional questions John Marshall quoted but few authorities. He might have accounted for this by saying that written constitutions had not thus far in the world's history been brought to the bar of an independent, untrammelled judiciary for construction. But that I conceive was not the true explanation of the fact. His associates frequently cited authorities which they deemed cognate. But John Marshall conceived that in a matter of such direct interest to every citizen of this republic as the construction of their own new and untried charter, the people ought not to be required to accept the doctrines of some foreign court; but that the grounds and reasons for the constitution ought to be stated in language so clear, and based upon logic so unanswerable that the construction could neither be rejected nor questioned. To that end he bent all his great powers, and the constitutional opinions written by him stand today for perspicuity and conclusiveness without peers in the law volumes of the world. Slowly, as case after case was brought before the high tribunal over which he presided, he unfolded his views and brought out the beauty, the flexibility and the capability of the constitution. It was a fundamental principle with him that the United States was a government with certain expressly granted powers and with certain necessary implica-

tions. That is to say, when he found express power given to do a certain thing, he reasoned that it must have been the intention of the constitution framers to grant power to do all those things incidental and necessary to the exercise of the power expressly granted. From that reasoning grew the doctrine of implied powers—a doctrine long combated, but now universally conceded, and a doctrine which really gave the federal government as great strength by reason of its implied powers as by reason of powers granted in terms.

The orator here commented upon the Dartmouth College case and the Bank case, and upon Marshall's services in 1829 as a member of the convention to revise the constitution of Virginia. After quoting from Marshall's speech in that convention the famous utterance, "I have always thought, from my earliest youth until now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt or a dependent judiciary," the orator concluded as follows:

Would that these words might be engraved as with a pen of fire upon the heart of every American voter. In the ultimate analysis, upon your courts rest both your liberties and your country. What matters it how perfect be your constitution, how free your laws. If the instrument of their enforcement be ignorant or corrupt the body politic is sick unto death.

I have not mentioned John Marshall's domestic life. It was his brightest ornament. The oldest of fifteen children, he never had angry altercation with brother or sister. Of him his father said the son never caused him real anger. A devoted husband for more than fifty years. His wife's death preceded his. In his own language "her sainted spirit fled from the sufferings of life." His respect for woman amounted to reverence. In his presence the ribald tongue was hushed and the name of woman sacred.

At the ripe age of eighty years, racked with pain but clear of mind, his mighty soul broke the shackles and returned to its God. When he was born a favoring Deity culled from the treasure house of Heaven the choicest sentiments of domestic love, the rarest flowers of patriotic devotion, the brightest gems of genius and the sacred gift of statesmanship, and, uniting them in one person, placed upon his head an immortal crown and stamped upon the crown the name of John Marshall.



## JUDGE BARTHOLOMEW'S RESPONSE TO TOAST.

*Mr. President, and Ladies and Gentlemen:*

Having been a member of the bar for thirty years past, it may be said of me that I ought to know something of that class of men—lawyers by profession—usually referred to as the bar. I ought to know something of their capabilities and powers. And the last seventeen years having been spent in what is now the state of North Dakota I ought to know something of the bar of our young state, and I do. And from close observation extending over these years I am able to say that there is no other equal number of men in our state who exercise so great an influence in affairs public and private, political and social. I do not say simply no other equal number of men coming from any one calling or profession, but I mean no other equal number of men selected from all callings. In every community I place the lawyer at the head of its influential citizens and in the front rank of those who shape its intellectual, social and moral life. That day is gone—forever gone—when the lawyer is looked upon as a walking technicality whose business in life it is to aid rogues in cheating and defrauding honest men. The lawyer of today is an absolute necessity in society. Increased civilization has brought increased business activity, increased industries and increased wealth, and these inevitably bring an increased clash of private rights and private interests. In civilized states there always have been and must be tribunals charged with the final adjustment of these conflicting private interests. Without such tribunals we speedily have only the rule of might and a return to first conditions. But to the end that these controversies be properly decided it is necessary that they be fully, clearly and fairly presented to these tribunals. For this purpose trained advocates have ever been deemed necessary. It may be true that any man can state his case to a court. The chances are he would state it very defectively. It was long ago said that the man who acts as his own lawyer has a fool for client.

Controversies must not be decided as the mental characteristics or the prejudices of a particular judge may lead him to think is right and just. Such a system would produce only confusion, and every phase of decision on parallel facts. We must have fixed rules of

property and procedure. Otherwise no man could ever feel assured in his possessions. It is the work of a lifetime to master and apply these rules of property and procedure. No layman can do it. Hence the lawyer is a necessity. But higher standards for admission to the bar and a stricter enforcement of those standards have materially raised the *morale* of the bar. We may not assert that there have not been individual members of the bar in the centuries that have passed that equaled in probity and ability any of the lawyers of our day, but we may assert that the bar as a whole stands higher today than at any time in the past. It is so understood by the public. The olden time slurs at the profession have ceased, and that man is commiserated for his ignorance who today states that every lawyer stands ready to sell his client's interest for a price, or that the party with the most money is always the successful party in litigation. However it may have been when the century was ushered in, as it is being ushered out the profession of law is, par excellence, *the* profession and is so recognized throughout this land. Into the hands of the bar and the bench the proudest citizen may at some time be required to trust whatever is dear to him—his property, his honor and his life. As these two are the conservators of so great interests let me for a moment consider their influence over and dependence upon each other.

That their relations are close is a necessary result of their functions, and equally certain is it from this fact that they are largely interdependent. An inferior bar is almost a guaranty of an inferior court. However careful and painstaking a judge may be he cannot always perform the work of the lawyer. He has not the time, and it should never be expected of him. If he correctly rule the case upon the points presented he has fairly performed his duty. And yet he is sometimes subjected to censure because the counsel in the case, perhaps from overwork, but oftener from lack of close application and investigation have failed to grasp the vital points involved. Later another case upon parallel facts is correctly presented and the court discovers that its first ruling was wrong and a reversal necessary. The reversal may give it a reputation as an unstable court and yet the fault was with the attorneys rather than with the court. True, courts do not always have an excuse of this character for these blunders. As a member of your appellate court I must admit that that court has sometimes erred in those cases to

which it gave the greatest amount of time and labor, and in which it reached a conclusion with which it was, at the time, fully satisfied, and yet further investigation, a still more exhaustive research and more careful reflection have demonstrated the unsoundness of such conclusion. In such a case there is but one thing for an honest court to do—reverse itself at the first opportunity let the censure be what it may.

There is another great fault into which courts are sometimes led by attorneys and to which I wish briefly to refer. Absence of zeal is a weakness to which the bar of this state never need plead guilty. Excess of zeal is the rule, and this leads the attorney to insist upon urging every point of law which he conceives may possibly have a bearing upon his case. Judges, at least until time and experience make them callous, are disposed to discuss each point presented, knowing that a failure so to do will be construed as inability to meet the point. Hence it often happens that opinions are too long, and are excursive and without logical connection or sequence. The judges who write them are ashamed of them before the ink that prints them is dry. In seeking to avoid special criticism they simply subject themselves to general criticism. For this there is no sufficient excuse. The tendency of the bench to adopt the style of the bar should never be indulged to the detriment of the opinions of the court. A case that is tersely and clearly argued and made to hinge upon its real pivot will usually be followed by an opinion equally concise and clear, one that unmistakably indicates the points decided and why. A case with the opposite presentation strongly invites the opposite treatment.

An active, accurate, studious bar will not long tolerate an inefficient court. Indeed with such a bar the court cannot long remain inefficient. If the bar can survive with such a court, the dullest judge will in time become educated by the mere process of absorption. There is not a court in this state that is not indebted to the bar of the state. As a member of your appellate tribunal I gladly acknowledge the debt in behalf of that court. For whatever reputation for ability and wisdom it may have acquired it owes more to the bar that has practiced before it than to any other one circumstance or condition.

Of the influence of the bench upon the bar I may speak with less assurance, and yet it is clear to any observer that the influence is

reciprocal. The court that presents to the bar a constant example of painstaking industry, strict impartiality and probity, offers to the bar the greatest incentive to excellence that can possibly be presented. Every self-respecting lawyer who knows himself to be a part of the judicial system for which such a court stands is urged by every pulsation of ambition and pride to be an honorable part of such system. But that lawyer who practices before a court of which he is justly suspicious in any material particular, occupies a position of great danger to himself. If, for any reason, he believes that his best work in his client's interest will not be appreciated or if appreciated will not be made effective, then his incentive to do good work is at once taken away, and the incentive once gone he will not do his best, and a long continued failure to do good work will deprive him of the power, and the once careful and accurate lawyer degenerates into the ordinary police court declaimer.

Of the bar of this state it may be said that, while individual exceptions may be found, yet as a bar you have steadily advanced in efficiency during the last ten years. As a body of men you are young in years. Many of you have not yet reached life's prime and few have passed its meridian. Your professional work is yet mostly before you. May our bench and bar ever work in harmony and for their mutual good. Their objects are, or should be the same—the enforcement of right, the suppression of wrong, the protection of innocence and the punishment of guilt. Let us proceed, not with that inconsiderate haste that smothers truth and bars investigation, nor yet with that unseemly deliberation that makes the law's delays just ground for complaint, but with that sound judgment and discretion that shall demonstrate to the world that nowhere is justice more rapidly and yet more certainly administered than in the state of North Dakota.

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#### MEETING OF EXECUTIVE COMMITTEE.

Pursuant to a call, the members of the executive committee met at the office of Newman, Spalding & Stambaugh, in the city of Fargo, at eleven o'clock, on the 26th day of March, A. D. 1901.

There were present Messrs. Newman, Bosard, Burke, Corliss, Ames, Blackwell and Register. After the reading of the minutes

of the last meeting, which were approved, the reports of the committees were taken up.

Mr. Bosard as chairman of the committee on John Marshall Day asked leave to file report later, stating that the report was not yet completed, and asked that the same be printed together with the other matters of the association.

It was moved, and seconded and carried that the expenses of Mr. Newman in going to Bismarck in the interest of the association be paid. It was moved, seconded and carried that the bills of the various members who attended the conference at Grand Forks, for the purpose of drafting a new appeal law, be paid. The parties in attendance at such meeting were Judge Corliss, Judge Templeton and Mr. Ellsworth.

Moved and seconded that the bill of R. W. S. Blackwell, J. H. Bosard and W. J. Burke be allowed, which motion was duly carried.

Moved, seconded and carried that Mr. Newman investigate the probable cost of printing the proceedings of the association up to the present date, and if he deem it advisable to have the proceedings of the association printed.

The chairman then appointed a committee to select a floral offering in honor of Judge Bartholomew; and Messrs. Corliss, Bosard and Register were appointed on that committee.

The committee then adjourned.

W. J. BURKE,  
Secretary.

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#### PROCEEDINGS OF STATE BAR ASSOCIATION.

Pursuant to regular call the association met at the court house in the city of Fargo on the 26th day of March, A. D. 1901.

Hon. Seth Newman presided. Minutes of the last regular meeting were read and approved.

#### REPORTS OF COMMITTEES.

Mr. Bosard reported on behalf of the committee on John Marshall Day and Mr. Newman reported on behalf of the committee on Jurisprudence and Law Reform. It was then moved by Mr. Bosard, which motion was duly seconded, that the president of



J. M. BARTHOLOMEW.



the association have power to appoint delegates to the meeting of the American Bar Association which will be held in Denver in August, which motion was duly carried.

The president then announced to the association the death of the Hon. Joseph M. Bartholomew, ex-chief justice of the supreme court, and also the death of Mr. Ben Ingwaldson. The president then announced that he had appointed Messrs. Corliss, Bosard and Register to procure a floral offering in honor of Judge Bartholomew, ex-chief justice.

It was then moved and seconded and duly carried that the association ratify the act of the president. It was then moved and seconded and carried that the president appoint a committee of three to draw suitable resolutions in memory of Judge Bartholomew.

It was then moved by Mr. Bosard that a permanent committee be appointed by the chair, consisting of three members, to which should be reported the death of any of the members of the association and which should constitute a committee on resolutions. The chair appointed Messrs. Bosard, Engerud and Blackwell.

It was then moved and seconded and duly carried, that Seth Newman and Guy C. H. Corliss at the next meeting of the bar association deliver eulogies on Joseph M. Bartholomew. It was then moved by Mr. Burke and duly seconded, that the chair appoint a committee to attend the funeral of Judge Bartholomew at Bismarck, to be held on March 27th. The chair appointed on that committee, Hon. B. F. Spalding, Hon. G. C. H. Corliss, Hon. Chas. J. Fisk, Messrs. R. M. Pollock, R. D. Hoskins and D. J. Laxdal.

It was then moved and seconded that the association adjourn until Thursday, March 28, 10 o'clock a. m.

W. J. BURKE,  
Secretary.

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#### MEETING OF EXECUTIVE COMMITTEE.

Grand Forks, North Dakota, September 17, 1901.

The executive committee of the bar association met pursuant to call at 7:30 o'clock p. m. at the court house in the city of Grand Forks.

There were present at such meeting: Seth Newman, president; J. H. Bosard, vice president; W. J. Burke, secretary; H. A. Libby



from the seventh judicial district; Judge Corliss from the first judicial district; and Mr. Brennan from the second judicial district. The report of the treasurer was received and filed, and the report of the secretary was read and received and the following members were admitted on motion: Judge R. M. Carothers and W. E. Hoopes. It was then moved by Mr. Libby and duly seconded, that the executive committee recommend to the bar association that they hold their annual meetings hereafter at the Chautauqua grounds at Devils Lake, North Dakota. And it was further recommended that the executive committee fix a date and arrange a program and that the same be part of the regular Chautauqua program.

It was then moved, seconded and carried that the following bills be allowed:

W. J. Burke, expense bills for postage, printing, letter-heads and envelopes, and salary for one year from September, 1900, to September, 1901 .....	\$122.00
Hon. Seth Newman, expense bill for attending September meeting, 1901 .....	5.00
J. H. Bosard, balance on bill for March .....	3.00
H. A. Libby .....	7.85
Chas. F. Templeton, for trip to Mandan as member of the committee in the disbarment proceedings of H. G. Voss .....	26.50

W. J. BURKE,  
Secretary.

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#### PROCEEDINGS IN MEMORY OF JUDGE JOSEPH M. BARTHOLOMEW.

At the opening of the September term of the supreme court at Grand Forks on Tuesday, September 17, 1901, Hon. Guy C. H. Corliss, chairman of the committee on resolutions of the North Dakota State Bar Association, addressed the court and presented the following memorial, passed by the state bar association, and the same was spread upon the minutes of the court:

## MEMORIAL.

Judge Bartholomew, who so recently laid aside the ermine, has, at the great summons which sooner or later comes to all, put off as well those earthly habiliments which here enrobe the human soul. While the stream of his life was flowing on with its noiseless and unruffled yet powerful current, it plunged without a moment's warning adown the precipice of death into that dark and mysterious abyss we call the unknown.

He to whom justice was so sacred may well claim from his professional brethren that unstinted justice be done his memory by written and spoken eulogy, though if he could yet speak from out the unseen no solicitation for encomiums would be heard from his lips, for he was one of the most modest of men.

The members of the bar association of this state make this permanent record of his worth as a man in all relations, and his exceptional ability and fidelity as a judge. His nature was kindness itself. His geniality was not something put on and worn to attract. Every one felt it to be the outward expression of innate warmth of heart and broad human sympathy. While one of the most approachable of men he yet possessed a dignity of bearing and an elevation of character that compelled respect. He impressed all with whom he came in contact as a man of power. Though quiet, modest, unobtrusive, and unpretentious, all left his presence feeling that there resided in him great strength of will and firmness and decision of character, that none could take liberties with him and that he possessed all the elements of true heroism. No matter what troubles beset his pathway, his serene and unruffled temper was never disturbed; and not even his most intimate friends ever heard complaint of any character from his lips. As a judge he has left upon the records of this state in his judicial opinions so many witnessses to his ability, learning, sound judgment, powers of reasoning and discrimination, conscientious research and study, and abiding love of equity, that other commendation of his judicial work is rendered superfluous. Breadth and solidity; mastery of legal and equitable principles; close and cogent logic; a beautiful, pure and clear style, and fullness of legal learning are found there, not as we catch occasional and momentary glimpses of the moon when the sky is overcast, but shining with a steady and unbroken

radiance from every page of his judicial utterances. Is it a vain boast when we ask whether judicial history furnishes many judicial careers which in so short a time have achieved a more enviable success? We believe that he will be known in after days as one of the great judges of the state.

Patient in hearing; exhaustive in research; deliberate in maturing his conclusions; without pride of opinion; always receptive of new light; self reliant and yet appreciating the value of precedents; gracious in his demeanor with the bar and his brethren of the bench; loved and respected by them all; far above even the suspicion of the possibility of an unworthy motive entering to disturb the incorruptible discharge of his judicial duty; he may well be described and he will long be remembered as an ideal judge.

While our hearts are sad that he has been taken from our midst, we yet feel thankful that his departure was painless and that life was vouchsafed unto him until his judicial career was ended.

He died as he lived, departing from earthly scenes as quietly as he was wont to go about in the walks of daily duty.

May his well rounded, fruitful and beneficent life be an inspiration to us all.

President Newman of the State Bar Association, then presented and read the following resolution of the Barnes County Bar Association:

A busy and successful career of bright and brainy activity, coupled with a life of arduous labor is an exemplary performance of every duty, both personal and public, has sadly, yet gloriously, closed.

An honored member of our profession, a just judge, a loyal and patriotic citizen, a profound scholar, an intrepid soldier, and an ideal character, has responded to the summons of his Creator, and, departing this life, gone to his rest and reward; and while the volume and value of his life work are amply sufficient to commend and commemorate his memory, nevertheless, we, the members of the Barnes County Bar Association, do hereby resolve that,

WHEREAS, It has pleased Him, in whose hands are all the issues of life, to remove from among us, and from those to whom he has ever been a devoted and loving husband and father, our beloved brother and faithful friend, the Honorable Joseph M. Bartholomew,

late chief justice of the supreme court of this state, who departed this life on Sunday, the 24th day of March, 1901, at his home in the city of Bismarck, therefore we, the members of this association, yielding unhesitatingly to the summary command of an omnipotent and adorable Deity, nevertheless, sincerely deplore the loss of our departed brother, whose conscientious and considerable labor, both as a citizen and judge, has contributed so materially to the development and progress of our society and state. And be it further

*Resolved*, That we do hereby extend to his bereaved and sorrowing family our heartfelt sympathy and condolence in this their great affliction, and we further respectfully request them to remember that our respect and admiration for our deceased brother, invited, encouraged and enjoyed by reason of his uprightness and fidelity, impel us to beg leave to mourn with them their great loss.

We hold that in the greatest trials, sadness is ameliorated and sorrow is to some extent expelled by kindly sympathy, especially where the cause arises from the loss of a man of such unequalled courage, conviction and character, and we therefore trust that the state-wide sympathy as expressed by the members of our profession will afford comfort and consolation to our departed brother's friends and family. Be it further

*Resolved*, That these resolutions be spread upon the minutes of this association; that a copy be forwarded to Mrs. Bartholomew and to the State Bar Association, and that at the next regular term of the district court for Barnes county appointed to be held in June, 1901, in Valley City, the president of this association respectfully move the honorable court for an order directing that a copy of these resolutions be by the clerk entered upon the record of said court.

Dated March 27th, A. D. 1901.

EDWARD WINTERER,  
LEE COMBS,  
S. M. LOCKERBY,  
ALFRED ZUGER,  
E. T. BURKE,  
Committee.

Mr. Newman also read a memorial of the Cass County Bar Association, as follows:

"The silver cord is loosed, the golden bowl is broken, the pitcher is broken at the fountain, the wheel is broken at the cistern, the dust returns to the earth as it was, and the spirit has returned unto God who gave it."

Another life has gone out. A brother rests, the fitful fever of his life over, his work done.

Yesterday, in the full strength and vigor of his matured manhood, his life well rounded in the service of the state, the honor of public duty well and conscientiously performed resting gracefully upon him, Joseph M. Bartholomew received the final summons, and passed gently from the finite to the infinite, from the temporal to the eternal; and it becomes us as associates in his chosen and loved profession, bowing humbly to the wisdom of the Omniscient, to reverently and lovingly lay upon the altar of his memory our weak tribute of words of praise, and the higher, nobler, holier tribute of our steadfast affection and admiration.

The record of his services on the supreme bench during the closing decade of the past century in assisting to mold the jurisprudence of this young commonwealth, and to lay broad and deep the foundations for the administration of justice within her borders, is made up and closed forever; and marks him as a man far above the ordinary in his profession; a man of ample learning, keen discrimination, accurate judgment, profound convictions of right and justice, and a high sense of the duties and responsibilities of his exalted position; and will stand as a lasting monument to his spotless integrity, his lofty patriotism, his honesty of purpose, his uprightness of character, his eminent judicial fairness and candor, and his fearlessness in the performance of duty.

In private life to know was to admire and love him. Always genial, always kindly, always considerate, with a sympathetic gentleness of character born of true manhood, the hours of social intercourse with him became to us all, pleasant, cherished memories.

Our deepest sympathy goes out to his family, in this hour of their darkest sorrow. In his passing to a new life, the state loses a patriotic, faithful, conscientious citizen, society a true man and the

profession an eminently able and honest member; and when the final verdict is in, it will be written, "Here was a man."

March 25, 1901.

SETH NEWMAN,  
GEO. W. NEWTON,  
CHAS. A. POLLOCK,  
Committee.

Chief Justice Alfred Wallin said:

*Gentlemen of the Bar:*

The resolutions which you have presented voice the high estimate which the members of this court have long since individually placed upon the character and abilities of Judge Bartholomew. Of the departed chief justice it may be said without exaggeration that he was not only a distinguished man, he was that certainly, but was in many points of view a very remarkable man, and one who legitimately earned and richly deserved the high professional honors which have been repeatedly conferred upon him by the suffrages of the people of this state. It will be difficult in my judgment to overstate the value of Judge Bartholomew's services to the profession and to the public at large, which were rendered during the eleven years of his service as a member of this court. It is conceded by those who were familiar with the deceased and are in a position to correctly estimate his abilities that he was by nature peculiarly equipped for the discharge of judicial duties. He was a natural judge and the gifts of nature were reinforced by life-long diligence in the varied walks of his chosen profession. He was moreover a forceful man and one who habitually reached his own conclusions as a result of independent processes of thought and investigation. He was possessed of unusual strength of will and was tenacious of his convictions when once deliberately reached, and yet with him firmness never degenerated into stubbornness. In his relations with members of the bar it is universally conceded that Judge Bartholomew was exceptionally considerate and often deeply sympathetic, while his intercourse with his associates on the bench was marked by sweetness and dignity of language and demeanor which evoked their constant admiration and their profound respect.

The opinions of this court as formulated by the deceased will certify to his exceptional abilities as an opinion writer, to his learning as a lawyer and to his acumen as a judge; and not less so than to the sacredness of his judgment as a practical man of affairs.

These opinions have been read with profit and increasing appreciation alike by the bar and his associates upon the bench and therefore the prediction may safely be indulged that the deliverances from this bench as made by the late chief justice will furnish a source of valuable information and precedent for many years to come; and if happily this shall be the verdict of posterity as well as that of his contemporaries, the highest ambition of the deceased will have been realized. It was his highest purpose to be of real service in his allotted sphere to the people among whom his lot was cast.

The resolutions which you have presented will be entered upon the records of the court, there to remain as a tribute to the memory of the Honorable Joseph M. Bartholomew. It is so ordered.

Hon. Guy C. H. Corliss then addressed the court as follows:

*May it Please the Court and Gentlemen of the Bar:*

With our spirits refined and chastened by the nation's unspeakable loss and by a sorrow in which eighty millions of people are partakers, we are met together on an occasion which reminds us of yet another loss and another sorrow peculiarly our own.

The administration of justice, in its legal sense, is for this day, by the order of this court, suspended, to the end that the bench and bar of this state may do justice, in its broader significance, to the memory of one who possessed, in an exceptional degree, those rare qualities which constitute the ideal judge.

We are assembled not to debate his worth as a man, or his strength as a magistrate, but to pronounce and record the final and irreversible judgment, without dissent of his professional brethren, touching his character, his attainments, his intellectual endowment and his judicial career. The position which Judge Bartholomew occupies, and will continue to occupy in the judicial history of this commonwealth, is not open to controversy. The unanimous verdict of those whose opinion on such a subject is of value has assigned him a station so commanding that he must, indeed, be a great judge who shall leave behind him a more enviable and enduring fame. Not that we place him in the very first rank of jurists with Marshall, and

Shaw, and Gibson, and Mansfield. Not that we claim he possessed that transcendent gift we call genius. Such an encomium would be tinged with flattery. And he, the most modest of men, would, in life, have scorned to be the recipient of fulsome laudation, and now that he is gone, in what way can we better honor his memory than by speaking of him that exact truth, which would have been more grateful to his ear than overstrained praise. And when only the truth has been spoken—when our words have been kept strictly within the bounds of veracity—they must nevertheless be so eulogistic in character that those who knew him not will I fear fancy that the warmth of friendship has colored and warped our judgment.

Judge Bartholomew was born on the 17th of June, 1843, at Clarksville, McLain county, in the state of Illinois. His father was George M. Bartholomew, a son of Major-General Joseph Bartholomew, who served his country as a soldier with valor and distinction in no less than three wars. When Gen. Bartholomew was hardly more than a mere child he joined the revolutionary army. Again, in 1812, he shouldered his musket in our second struggle with Great Britain. In 1832 he led the Indiana infantry against the Indians in the Black Hawk war of that year. For bravery in that war he was breveted brigadier general of volunteers, and two years later he was raised to the rank of major general by the president of the United States for his skill and rapidity of movement in relieving Lieutenant (afterwards president) Taylor, who was besieged by Indians in Fort Harrison.

Judge Bartholomew's mother was a Heffner, of Virginia. Her father was a planter and a man of influence in that state. It was from his mother, I am informed, that he inherited that kindness of heart, that thoughtfulness of others, and that uncomplaining and never failing patience which were among the notable traits of his character. When he was only two years of age his parents moved with him, their first born, to Lodi, Columbia county, Wisconsin. Here he received his early education and grew up to manhood. When he was 18 years of age he entered the Wisconsin State University, but his patriotism prevented his completing his course. In August, 1862, when he was only 19, he enlisted as a private in Company H of the Twenty-third Wisconsin Infantry volunteers. He was mustered out November 14, 1865, as first lieutenant of one of the com-



panies of that regiment. He was in the battles of Chickasaw Bayou and Arkansas Post, and also participated in the various engagements around Vicksburg. He formed part of the army that besieged that city, and was likewise engaged in the siege of Jackson, Miss. He aided in capturing the forts at the mouth of Mobile Bay. Later his command was transferred to the department of the gulf, and he was under Gen. Banks in the Red River campaign. During his whole army experience, covering a period of over three years, he was never wounded or taken prisoner, and lost but ten days from illness, a most exceptional record for one who had seen such long, active and dangerous service.

At the close of the war he took up the study of law in the office of Senator Allison of Iowa. He was admitted to practice at Dubuque in that state in 1869. For a while he was located at Lodi, Wis., and he then moved to Red Oak, Iowa, where he enjoyed a successful practice for eight years. In 1878 Judge Bartholomew married Miss Mary S. Harrington, of Virginia, who with their only daughter, Miss Freddie, survives him. In 1883 he came to the territory of Dakota, settling in LaMoure, where he resided until 1889, when he was elected one of the first judges of the supreme court of the new state of North Dakota. He was re-elected in 1894 and left the bench at the expiration of his second term in January, 1901, having served a little over eleven years as supreme court judge, during a portion of this time being chief justice of the court. Immediately on retiring from the bench he resumed the practice of his profession, and although less than three months had elapsed at the time of his death he had already been retained in a number of complicated cases involving large sums of money. He died suddenly of heart disease at his home on Sunday, March 24, of this year. He was supposed to be in perfect health and his unexpected death was a great shock to the people of the state.

I will not soon forget that Sunday on which word came to me over the wire from Judge Young that he whom I so much esteemed and admired had died without a moment's warning. To me it was more startling than the flash of lightning from a cloudless sky. It was as though some favorite elm or well known oak, large in girth, rich with its wealth of foliage, its branches widespread, deeply rooted in the soil, and apparently sound to the very heart, had, in the stillness of the noonday, while standing in the glory of its strength

and beauty, seemingly able and destined to withstand the blasts of many years to come, fallen with far resounding crash to the earth that nourished it, one moment life with its fullness and its promise, the next moment death, with its unspeakable ruin, filling the beholder with dismay.

If we should judge him by the number of his days, we should say that he died comparatively young. He was only in his 58th year when the great summons came. But if we judge him by the truest of all standards, what he achieved and the impress he left upon the commonwealth in which he labored, we may truthfully say of him that he died in the fullness of years. And yet, how short was his judicial career when compared with that of many distinguished judges. That he won so high a reputation during so relatively brief a service on the bench, affords conclusive proof of his peculiar and eminent fitness for the judicial office. Marshall himself had not built up a greater fame at the close of the first eleven years of his labors as chief justice, and had he then died the title of the "Great Chief Justice" would not have been his, albeit, he would have left behind him a reputation as a jurist of eminent ability. While truth compels us to assign to Judge Bartholomew a station not in the first rank among the few loftiest judicial names, it also demands that we take note of the fact that they enjoyed the double advantage denied to him of great length of judicial service and the opportunity for the highest distinction on the bench incident to formative or transition periods in jurisprudence. What he might have wrought under similar conditions we cannot tell. Certainly, no one who knows what he did do, would venture the prediction that to have done Marshall's work was beyond the scope of his brain.

How fortunate was he in his death. If the time had indeed come when he must put off this mortal body, who could wish that the mode of his departure had been different? Without any of the suffering of body or mind incident to a lingering illness he fell in the fullness of his strength and in the activity of all his powers. No tossing upon a feverish pillow, no consciousness of waning vitality, no weakening of the intellectual faculties, no sad and weary hours of looking forward to the near and approaching grave; but with the full tide of life at its very flood surging through his veins, the future stretching away before him in an attractive vista of years of congenial work, of usefulness, and of increasing reputation, he sank without a mo-

ment's warning on the threshold of his home into the arms of the Infinite Beneficence. Nor was Providence altogether unkind to him in the time of his departure. We regret that longer life was not vouchsafed to him, and yet we cannot but feel grateful that that mysterious and unescapable change we call death came not until he had finished his judicial labors and had delivered on John Marshall day, at the capitol, in the presence of the legislature and the state officials, that thoughtful, discriminating and eloquent address on the life of the great chief justice; that address in which he unconsciously delineated many of the traits of his own character and many of the qualities of his own mind. Doubtless his life would have been more rounded if he had lived another decade. But such disappointment is common to mortal flesh. Few, indeed, leave behind them perfectly finished careers. Of most it is true, that even while they plan and labor on the uncompleted structure "comes the Blind Fury with the abhorred shears and slits the thin spun life." He was one of the most modest of men. Self glorification was utterly foreign to his nature. He even appeared to shrink from listening to that praise from others which was justly his due. He served his country faithfully and honorably throughout the greater part of the war of the rebellion and many must have been his deeds of courage and self denial, from the day he enlisted until he was mustered out. And yet, during eleven years of intimate acquaintance with him I never heard him allude to his military career. It was a subject on which his lips were absolutely sealed. He had engaged in and won important forensic battles, and we all know how natural it is for the lawyer to narrate the incidents of such memorable struggles in his hours of relaxation among his professional friends, but I never heard him refer, except in the most incidental way, to a single litigation in which he had figured as counsel while he was at the bar. His grandfather had left behind him a brilliant record as a soldier and a patriot—and how prone are we all to recount and even magnify the notable achievements of our ancestors. But his closest friends never heard him boast that in his lineage there was a name so justly warranting family pride. He was, as Mr. Engerud has well said, one of the kindest of men. I believe he was incapable of consciously doing aught to injure the feelings of another. It was this quality that endeared him to the bar and to his associates upon the bench, and to the people of the state as well. Especially warm was the regard of the

younger lawyers for him, they who need and appreciate kindly sympathetic encouragement. There are doubtless some present who felt the trepidation incident to a first appearance before the supreme court materially lessened because he occupied a seat on the bench. I question whether at the time of his death he had or whether he ever had a single bitter personal enemy. He loved solitude. He preferred to be much alone, and yet the social side of his nature was largely developed. He did not feel the need of friendly intercourse. He had within him resources upon which he could draw at pleasure; and yet he enjoyed converse with his fellow man; nor was there anything aristocratic, haughty or distant in his relations with others, no matter how ignorant, inferior in intellect or humble in social position the individual might be. Any analysis of his character would be sadly incomplete which omitted what was perhaps the most striking element of his nature—his quiet heroism. There is a heroism which can storm a battery, and there is a heroism which can serenely face death on the scaffold in a great cause. Such heroes, however, are under the stimulus of excitement and are buoyed up by the thirst for fame. But there is another heroism of a loftier type. No bugle call stirs its blood. It hears not the plaudits of millions ringing in its ears. Its imagination is not thrilled by the thought that it will leave behind a name in the grateful memory of coming generations. It bears without a murmur the heaviest burdens, knowing full well that the world will never realize the grievous weight under which it walks, sometimes staggering in the pathway of duty. It hears and hopes for no other commendation than the voice of conscience. It makes no complaint and through trials which would crush many it maintains an outward composure as though the life was spent in an atmosphere of perennial peace. Such was the heroism of Judge Bartholomew. Seldom if ever have I seen it equalled. I question if it ever has been surpassed.

This but one of the many illustrations of his remarkable strength of character. He was a self centred man. There was nothing of the clinging vine to his nature. In trouble he did not ask any sympathy. He did not even seek that relief which comes to the burdened spirit when it pours into the ears of another its tale of sorrow, though sympathy be denied. In tribulations his lips were sealed. He felt no need of external aid, for the strength within him sufficed to bear him through every vicissitude. He was a man of extraordinary reti-

cence. He had friends to whom he was warmly attached; and yet to none did he ever fully unbosom himself. It was not a haughty reserve. It appeared to be a constitutional trait. Circumstances may have contributed to develop it, but its roots were deep in his nature. His joys, his disappointments, his trials, his aspirations, his religious thought found audience only within him. They never rose to his lips, for a perennial reticence barred all egress.

I have spoken of him as an ideal judge. He had the judicial temperament and cast of mind in pre-eminent degree. In this respect he could not be surpassed, and seldom has or will be equalled. He was one of a thousand. Calm, steady, free from the disturbance of prejudice and one-sided intensity, instinctively weighing everything in the balance, holding the judgment in check until he had pondered long and deeply and had considered every conceivable conclusion in all its relations; he was born for the bench as Alexander was born for conquest. It was this temperament and this structure of mind that in a measure disqualified him from rising rapidly to a commanding position at the bar. When he was nominated for the supreme bench he had no such general standing as a lawyer among the people of the state as his talents entitled him to. Men with less intellectual calibre had attracted more notice. But the members of his own profession knew him to be one of the very ablest lawyers in the state.

From eleven years' intimate acquaintance with him I can bear witness that he was singularly free from any pride of opinion. His mind was always open to light. The writing of an opinion did not necessarily set his judgment so that new argument could not remould it. Not that his mind was weakly plastic. The reverse was the case. Its fiber was exceedingly strong. And he was so painstaking in his work, and his will was so firm that nothing like vacillation characterized his conduct in the decision of a case. The conclusion he reached was not easily altered. But this was not because he loved to flatter himself with the thought that he was nearly infallible, but because the comprehensiveness of his mind enabled him in the great majority of cases to consider before the preparation of his opinion every circumstance and every argument so that new light on the case was no longer possible. Not a few of the written opinions of the court of which he was a member were radically changed after reargument; and some of these opinions were his own. There

was never a time during his eleven years' service on the bench when he could not weigh a criticism of any opinion he had written with the same judicial fairness with which he originally approached the consideration of the case. In this connection I would allude to the firmness of his will. He did not call upon the heavens to witness that he could not be moved from his decision or deflected from his purpose. Loud vaunting was never his style. But those who knew him realized that the quiet unboastful man was anchored to his determination, not with a silken cord, but with a cable of steel. The logical power of his mind was great. Indeed if he had any weakness as a judge, it was a tendency to follow the windings of logical conclusions somewhat at variance with practical judgment. His judgment, however, was sound and safe, and in the last analysis he would sacrifice on its altar the result to which logical processes had conducted him. But he sometimes seemed to witness with regret the destruction of the beautiful and flawless offspring of his reason. When, however, syllogisms brought him to conclusions inimical to natural justice there was no regret—not even a moment's hesitation. Logic he could—and even legal principles he sometimes was strongly tempted to—push aside to thwart the machinations of wrong. Abhorrence of every form of injustice was so deeply rooted in his nature that time and again he had to struggle to look beyond the narrow horizon of the particular case into the broader field of future consequences from the deviation from settled doctrines that equity might, in the immediate present, be done. Oftentimes he would, for a moment, make the plea of Bassanio, that established rules be departed from that evil might be foiled. It was the man that spoke then. But it was never long before the spirit of Portia filled him, and the magistrate answered the appeal of the man as Portia did that of the friend of Antonio, that to unsettle the law is a greater evil than to maintain its integrity at the cost of injustice in a single case.

His knowledge of principles and his grasp of the philosophy of the law were ample. We do not claim for him the legal learning of a Story; nor had he traveled as far afield as theoretical jurists in speculation and investigation into the genesis and history of various systems of jurisprudence. But he was thoroughly equipped for the great work of the practical administration of justice through the instrumentality of human tribunals. A redundancy of legal learn-

ing is of no advantage to the practical jurist. Indeed it sometimes enfeeble the mind and creates a confusion which renders it difficult and often impossible to select from the exuberant wealth of materials the controlling doctrine in the case. After all, the great faculty needed on the bench is the power to seize upon the dominant principle in the clash between widely different rules, all seemingly applicable to the case. He seemed to know, by a sort of legal instinct, what rules must give way and what must be accorded supremacy, when to many minds the question would be exceedingly difficult of solution. His mind was discriminating, and yet to his intellectual vision was not microscopic. The brain that is too fertile in distinctions can never take a broad view of any subject, and is therefore unfitted for judicial work. In the main, the rights of litigants must be judged by general principles, and by keeping the mind free from quibbling and hair splitting in exploring the record for the vital and controlling facts. As between the over-subtle intellect and the one somewhat deficient in powers of discrimination, but possessing soundness of judgment and breadth of view, the latter is far the safer and more valuable for the work of the bench. Judge Bartholomew, however, did not belong to either class. In this respect he seemed to me to be as nearly perfect as is possible to fallible man. He could and did discriminate sharply when there was ground for distinction. But he could not—and he never essayed to—"sever and divide a hair twixt north and northwest side." He had no slavish veneration for precedents. And yet he saw that a rational deference to authority was of the very essence of the law, and that in the main necessary changes should emanate from the legislative body. No one could be more ready in a proper case to deal fearlessly and radically with an unsound decision. But he was no judicial iconoclast smiting the established system that he might erect in its place his personal views as to what the law ought to be.

He had not the root and branch spirit of Bentham. Neither had he the ultra conservatism of Lord Eldon. As a general rule he pursued the beaten paths of jurisprudence. And yet, he also saw that legal science was not perfect, that it must grow, and that some of its best developments might come from a wise and cautious use of the power of the judge to alter what had become obsolete, or what was bound to work intolerable injustice.

Those who had occasion to appear before the supreme court while he was one of its judges will not soon forget his urbanity on the bench. He never exhibited the least impatience, even under circumstances calculated to disturb the equipoise of the calmest mind. He invariably accorded to counsel a most respectful attention. He did not essay, by remarks from the bench, to parade his legal learning, nor did he ever, in the argument of a case, espouse either side, and thus force counsel to engage in a contest with the court as well as with his adversary. Whatever observations he made during the discussion of a case were in the nature of inquiries to elicit information, or of a brief statement of his views; and sometimes he would indicate that a particular point was giving him trouble and ask counsel for light. His graciousness has undoubtedly encouraged and helped many a young attorney who, for lack of experience, had not yet acquired the self possession of a veteran of the bar. But while he was kind and gracious, he never suffered any one to forget that he was in a court of justice and what was demanded by the proprieties of the place. There was nothing in his manner unbecoming his high position. Far from it. His dignity of bearing could not be surpassed. Those who knew him well saw behind it the real dignity of character of which it was the outward and natural expression. He did not pose. He did not by his demeanor say: "I am Sir Oracle." He was dignified in his bearing simply because within were high ideals, lofty self-respect and true nobility of character. His dignity was a part of the man, not something put on for outward show. And it attended him wherever he went. In court and out of court, at home, on the street, in social intercourse, in his intimate relations with his associates on the bench—everywhere, he had the same quiet and never failing dignity which compelled the respect of all. Approachable, genial, companionable, he yet had that about him which warned all who came in contact with him that there was a line of familiarity which none must pass. Although I enjoyed an intimate acquaintance with him, I would as soon have thought of smiting him in the face as of greeting him with some of the well-known forms through which good fellowship is oftentimes expressed. I could lay my hand on his shoulder in expression of my regard or sympathy. But I would have deemed it almost sacrilege to have struck him on the back with a loud and boisterous salutation.



Although he was not connected with any church organization he was at heart a religious man. On the subject of religion, however, as on so many other subjects, he was extremely reticent. Seldom did he allude to it and then only in the briefest manner. Just what theological views he entertained it is impossible to tell. Though I essayed a number of times to draw him out I never could ascertain whether he clung to the older orthodoxy, or accepted the modern modifications thereof or should be classed among the radicals. Perhaps he knew not himself and it is no matter. Theological systems are not religion. They are multitudinous and evanescent, while religion is one and experiences no change. They come and go as shadows pass over a summer landscape.

"Our little systems have their day.  
They have their day and cease to be.  
They are but broken lights of Thee,  
And Thou, O Lord, art more than they."

From the few words he dropped I inferred that he leaned towards the older creeds; and yet it was difficult to discover in him a sympathy with Whittier's sublime rebuke of man's futile efforts to measure the infinite and search out the divine plan.

"Who fathoms the eternal thought,  
Who talks of scheme and plan.  
The Lord is God. He needeth not  
The poor device of man.

"I walk with bare, hushed feet  
The paths ye tread with bloodness shod.  
I dare not fix with mete and bound  
The love and power of God."

He believed that man is no flesh that perisheth, but spirit that is immortal; that there is a moral governor of the universe whose nature is love and whose unchangeable purpose is beneficence; and that the divine plan is the development of the human soul into harmony with the infinite soul. No subscription of any creed would have added aught to the evidence that he was religious in the truest sense of the word. This was shown by his gentleness, his kindness, his sympathy, his unfaltering fealty to duty; his heroism, his life of self sacrifice, his high ideals, his purity in all relations and his tender and unspeakable devotion to those who were nearest to him. What are these but religion itself?

I hardly dare to allude to his incorruptibility as a judge lest I insult his memory by seeming to indicate that his fair name as an upright magistrate is in need of defense. No testimony from his professional brethren on this point is called for. The people believed and rightly believed in his unspotted purity as a jurist with a faith that nothing could have shaken and which was as wide as the borders of the state.

The opinions he wrote were characterized by a high order of excellence not only for the soundness of their views but for their literary merit as well. His style was terse, pointed and clear. He possessed a very happy faculty of orderly and lucid exposition of the facts, and no man could determine more quickly or more infallibly the essential facts of the cause to be decided. His reasoning was compact, and there was a smooth flow to his sentences which made the reading of them a pleasure. It may be truthfully said that he possessed a beautiful and correct style; that it was not marred either by redundancy or by poverty of expression; and that strength and dignity always characterized it.

His reputation as a judge extended far beyond the limits of his state. There are some here today who have felt the thrill of pride at hearing unstinted praise of his work by able lawyers and judges in other jurisdictions. He was an orator of more than ordinary strength and he has delivered some addresses in the state that will be long remembered.

He is gone and yet he is still with us—with us in memories that will not soon fade away. We again see him enter this temple of justice at the head of his associates and ascending the bench take his seat thereon and preside over the deliberations of the court with his accustomed dignity and grace. We look upon his benignant and intellectual countenance as of yore. We hear the mild tones of his voice. His presence inspires us with the feeling that he is every inch the judge and that the seat he occupies is his by an almost indefeasible title. He is with us, too, in the inspiration of his example, and he lives and will continue to live for the bench and bar and people of the state, aye, and of the nation also, in his solid and enduring contributions to jurisprudence. His memory will not soon perish. For many years will he be accepted in this state as the standard by which to gauge judicial fitness and judicial work. Long will it be ere he will share the fate common to lawyers and

judges whose names are not connected with some great historic event—their gradual fading from a distinctive view as the age in which they live recedes, even as the forest trees on the mountain side, though some of them be monarchs, are finally enveloped and lost to sight in the blue haze of the far receding hills. It requires no stretch of the imagination to predict that even a century hence those who can judge of his work will pay him the tribute that he labored on the temple of justice with usefulness and distinction. Can a lofty and pure ambition ask a more precious fame ?

Hon. Seth Newman then addressed the court and said:

*May it please the Court:*

Nearly five months have passed since, without premonition, Judge Bartholomew passed to his final rest. On the suggestion of his death, this court adjourned as a mark of esteem, and appointed this time as the most appropriate occasion for hearing such tributes of love and respect as his brethren of the bench and bar should see fit to offer to his memory.

The effect of the sudden shock, the poignant sorrow, felt at the first intelligence of his unexpected demise, have been mellowed by the passing of time, and we may now, with clearer vision, with more accurate discrimination—calmly and dispassionately, here, in this temple of justice where extravagant statement and fulsome adulation would be ill advised—do more complete justice to his character as a lawyer, a jurist, a citizen and a man. It is not my purpose to enter on an extended eulogy of Judge Bartholomew. My acquaintance with him began on his accession to the supreme bench of the state and continued for eleven years until his death. Our intercourse, living in widely separated localities, was not as intimate socially as it would have been under other conditions, and there are other members of the bar, who, from more intimate knowledge of him personally, are more competent to form a just estimate of his personal and social character; yet I can not refrain, at this time, from offering my feeble tribute to his worth, expressing my deep conviction of the nobility of character he exhibited in all the walks of life, and the true manhood, which was ever the overshadowing attribute of his nature. Our judgment of the living is never accurate, never clear, never dispassionate, never just. The struggles, failures, disappointments and perplexities of life cloud our vision

**and distort our perception. The passions common to humanity, accentuated and intensified by the fierceness of the struggle for existence, unfit us to clearly perceive and justly appreciate the virtues of our fellows.**

But in the presence of the great mystery which we call death, human prejudices, human passions, envy, hatred and malice shrivel and pass away, charity holds the scales with which we weigh the deeds of men, and in the purer light of the chastening influence of the great destroyer, we discern more clearly the true character of those who have left us forever. It has been said that "the evil men do lives after them," but as the golden rule of life, enunciated by the Great Teacher, becomes more and more the basis of human motive and human action, the evil perishes. Only the purer, nobler, higher elements of character survive, and become enduring memories, which we ever delight to cherish. They are the voices of the voiceless speaking on forever. Conscious that in life all walk in the shadow of faults and failures which ever beset and hamper us, in the presence of death, under the gracious influence of faith in the brotherhood of man, we more and more willingly judge as we would be judged. The voice of envy is hushed. Passion, prejudice, jealousy, all animosities are forgotten. Peculiarities, traits born of environment and of special conditions in life, fade away. Only the sterling worth of true manhood, and nobility of character, remain and endure while memory lasts.

When a man dies who has heroically fought the battles of life, who has been true to his convictions of duty, and faithful to every trust, who with the courage of his convictions has stood strenuously for the right, unawed by foe, unswerved by friend, he is entitled to our praise and highest admiration, and in paying tribute to his memory we honor ourselves and the civilization to which we belong.

The literature of the world is rich with the tributes of love and admiration paid to such; the homage distinctively given to the manifestation to the highest type of manhood, the recognition accorded to the most perfect development of human life. The people of all nations have delighted to honor those who have uttered the best thought, and steadfastly stood for the noblest endeavor of their time.

Upon the intelligence, courage, integrity, virtue and patriotism of the citizen, rests the success and perpetuity of free institutions, and it well becomes us as Americans, to honor the memory of a brave, intelligent, independent man, of unblemished integrity, purity of motive, steadfastness of purpose, and unwavering determination for the right, who has met the duties of life heroically and performed them faithfully. Such a man was Joseph M. Bartholomew.

As a lawyer he was the peer of any in the state. He was no mere case lawyer, but was familiar with, and had a keen discriminating understanding of the great fundamental principles of natural justice and equity, which are the foundation of all law—and of their proper application to the transactions of life. His perception and understanding of the framework and nature of the American system of constitutional government were clear and well defined, and he had an abiding faith in the ability of the American people to maintain and perpetuate that government. He was thoroughly conversant with the line of demarcation which separates federal from state jurisdiction in our complex system. He was a man of original thought, of breadth, learning and great logical reasoning power, painstaking, conscientious and industrious.

With a receptive mind always open to conviction, ever considerate of the rights and feelings of others, tenacious of his own opinions, while extremely tolerant of all others, with a temperament always calm, self possessed and genial, with a fine sense of justice and right, he was a model jurist. His opinions written while on the bench were a credit to himself and an honor to the court and to the state. They were always clear, scholarly, concise, logical, forceful and convincing. He was ever mindful of the fact that the province of the courts is to declare and enforce the law, not to make it. On the bench he was ever patient, affable and genial, yet always dignified and just. In the discharge of official duties he was unapproachable and incorruptible and knew neither friend nor foe. The accidents of wealth, position and influence were not persuasive with him.

He was a man of courage and acted without fear. He was loyal to his convictions, thought for himself and spoke what he thought. Friendship could not swerve nor enmity deter him. He clearly saw the path of duty and courageously followed it. His self respect was his constant companion. He was without vanity or ostentation, yet a commendable pride gave him great force of character.

**He** was an absolutely honest man. No cloud of suspicion ever **rested** over him, no breath of calumny ever touched him, no arrow of **vituperation** was ever aimed at him.

**As** a citizen he was irreproachable. In the agony of his country, **he** offered his life for her protection. Upon all social and political questions he was found with those who wrought for the good of the social fabric. With his qualities and characteristics, good citizenship was a matter of course, a necessity.

But above his qualities as a lawyer, above the ermine he wore, **above** all other elements of character, towered in calm majesty like a lofty mountain peak, a genial, kindly humanity, a tenderness of sympathy, a kindness of heart, a gentleness of manner, a sincerity of friendship, a true, noble manliness, that overshadowed all else.

He was more than a lawyer, more than a jurist, more than a citizen, more than a patriot. He was a true man. It was this that drew to him the admiration, the respect, and the sincere friendship of all who associated with him.

It is as a type of that which is best and highest in life that we honor him. We cherish most, his qualities of soul. These will endure in memory when all others are forgotten.

In the full power of his mature manhood he left us.

In the midst of the activities and responsibilities of the practice of his chosen profession, in the prime and vigor of life, at the meridian of his usefulness, at the summit of his career, with the well earned honors of official service resting gracefully upon him, the future full of hope and promise of rich reward, the summons came, and he passed gently, silently beyond the limits of our vision, beyond the reach of human praise or blame, beyond the bounds of time and space, beyond the sunset's purple twilight, and entered the dawn of eternity, that vast realm of peaceful rest, peopled by the innumerable, the final goal of all human hope and aspiration, leaving with us only the memory of a brave, honest, true, noble man, who bowed alone to death.

General W. H. Standish said:

*May it please the Court:*

It was my lot to know Judge Bartholomew from the organization of our state until the time of his death. During two years of

that time I was placed in daily contact with him at Bismarck. Living in the same building, and meeting him there and at his home; seeing his demeanor towards his neighbors and those coming in contact with him officially and as citizens or neighbors, I can say that I can cheerfully and heartily endorse and second the resolutions that have been placed before this court by the three different associations and the remarks of the court.

Hon. Burleigh F. Spalding said:

*May it please the Court:*

I have not come here prepared or expecting to say anything on this occasion, but there are one or two elements in the character and make up of Judge Bartholomew that have always struck me very forcibly. From the earliest dawn of history to the present time, it has been customary on the death of distinguished citizens and public servants for the public to analyze their characters and their abilities. This is well. It serves as a guide to the young and to the inexperienced and to those taking their places. It has of late years been somewhat in vogue to consider only men of genius, only those pursuing or directing their efforts in the line of some specialty, as being the most valuable citizens and the most entitled to the encomiums of their fellow men. It is a question in my mind whether this is the correct method by which to estimate any person's life either in public or private. It has often occurred to me if the world were made up only of specialists, of people who were brilliant in certain lines, that it would be a very ill balanced world, and that especially in a republic. It would be far wanting in the elements which are necessary to the equipoise of the state and its institutions. It has seemed to me rather, that the public servant—that the private citizen was the best public servant and the best private citizen who was the best balanced in all lines and in all directions, whose judgment was good, who was not carried off by flights of fancy, or in any particular line, to the exclusion of the other sides of his character, or the other phases of his occupation or position; and in thinking on this line, and in line with that thought, it seems to me that I have never known a man who more fully lived, or came up, to the ideal of a well rounded citizen, of a well balanced public servant, of a fully equipped judge than did the late Judge Bartholomew. And,

for these reasons, to say nothing of many others, his death is a great loss to the bar and to the bench of the state of North Dakota. Men of character and integrity combined with legal attainments of high order, of ripe judgment and symmetrical in all the elements of manhood and good citizenship are not always available for positions of trust and responsibility and the people of this state have reason in the death of Judge Bartholomew to mourn the loss of one who in my estimation came very near filling all these requirements.

Edward Engerud said:

*If the Court please:*

There was one element in the character of Judge Bartholomew which more than any other won the affections of the younger members of the bar. We all knew, appreciated and admired his personal dignity, his ability and learning, but the one great trait which appealed to the hearts of every member of the bar, and particularly of us younger members who came in contact with him, was the kindness of the man. No one could come in contact with Judge Bartholomew without feeling that he was a man of warm sympathies and kind heart, ready to extend kindly encouragement to earnest effort. His integrity, dignity, learning and ability won our respect, but his dignified kindness won our hearts. Hence it was that when the sudden news of Judge Bartholomew's death came, it was especially a shock to the young members of the bar. Each one felt, I am sure, as I did, that we had lost a personal friend.

M. H. Brennan said:

*May it please the Court:*

I had the pleasure of meeting a gentleman of Seattle, who was on his way to Europe in the interest of a large estate. In the course of our conversation he said: "You have a brilliant court here in North Dakota and you have lost a very brilliant man (referring to Judge Bartholomew). The decisions of this court have great respect in other states. We think very much of them in our state." I told him I felt considerable pride in that as a member of the bar of North Dakota, and I tell this little incident here as something of more value than I could say as showing the wide reputa-



tion of Judge Bartholomew in regard to his ability. I have noticed that his writings stand the test of literary criticism and his addresses meet with unanimous popular approval, two qualities which are rarely found in the same person.

I shall feel that life was not spent in vain if, when I am gone, even one person shall feel as deeply for me as I do for Judge Bartholomew.

W. E. Purcell said:

*May it please the Court:*

It was my fortune to know Judge Bartholomew reasonably well, and with profit to myself. When he was nominated and elected a member of this court there was perhaps somewhat of a feeling pervading the people of the state that perhaps he was not as well qualified as many other lawyers in the state to perform the duties of an appellate judge, but his work, as a member of this tribunal, in a very short time dispelled any fears as to his fitness for the position. He demonstrated as a member of this court, to the legal profession and to the people of this state, that he had a clear, logical and analytical mind. His decisions will stand as a monument both to his fitness and to his integrity, and the state of North Dakota at no time in the past has lost an officer that she will miss more than Judge Bartholomew.

C. E. Leslie said:

*May it please the Court:*

I did not intend to say anything in memory of Judge Bartholomew, not that I do not wish to, but because there are so many here who are more able to do so.

I generally say but little on occasions of sadness, as I feel very strongly when anything of this kind really moves me, and therefore I shall say very little.

It has been my fortune to be a member of the bar and appear before the supreme court of three different states; each of these states having a supreme court whose decisions stand high. The old state of Vermont which had upon its supreme court bench such men as Colmer, Redfield and Barrett who certainly rank high, as

members of this court who have had occasion to examine eastern authority well know.

The supreme court of Minnesota under Chief Justice Gilfillan was certainly a very strong supreme court, but I have never felt that the supreme court of North Dakota need take a second place. And of the members of this supreme court we all recognize the fact that the chief justice, who has lately been taken from us, did much to give our supreme court the standing it has, and we all, both admire him and revere his memory.

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### ANNUAL MEETING OF BAR ASSOCIATION

Grand Forks, North Dakota, September 17, 1901.

Pursuant to regular call as provided by constitution and by-laws, and in pursuance of an order of the president, the Bar Association of North Dakota met at the court house in the city of Grand Forks, at 8 o'clock p. m., on the 17th day of September, 1901, the Hon. Seth Newman, presiding.

The minutes of the last meeting were read and approved. The report of the executive committee was then made to the association, and it was moved and seconded that the request of the executive committee asking the association to hold their annual meeting hereafter at the Chautauqua grounds at Devils Lake, North Dakota, be adopted. Extended remarks were made by Mr. Libby, Mr. Bosard, Mr. Baldwin, Judge Corliss and others and upon vote the same was duly carried.

The next business was the election of officers. It was moved by C. F. Templeton and seconded, that the secretary cast the vote of the association for the Hon. Seth Newman as president for the coming year, which motion was duly carried. It was moved, seconded and carried that the secretary be instructed to cast the vote of the association for J. H. Bosard for vice president. Motion carried.

It was moved, seconded and carried that the secretary cast the entire vote of the association for W. J. Burke as secretary of the association for the ensuing year. It was moved, seconded and carried that the secretary be instructed to cast the vote of the association for R. W. S. Blackwell as treasurer for the ensuing year.

The report of James M. Austin of Ellendale, giving a synopsis of the meeting and work done by the American Bar Association was then read. It was then moved and seconded that the report of Mr. Austin be received and filed, which motion was duly carried.

It was then moved that we now adjourn, which motion was duly carried.

W. J. BURKE,  
Secretary.

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#### MEETING OF EXECUTIVE COMMITTEE.

July 3, 1902.

Meeting of the executive committee of the Bar Association of North Dakota held at the office of Newman, Spalding & Stambaugh on Thursday, July 3, 1902. Present: Messrs. Newman, Bosard and Ames, Mr. Newman holding proxies of Messrs. Corliss, Thomas, Burke and Libby.

F. W. Ames was on motion appointed secretary pro tem.

Moved by Mr. Ames that Mr. Bosard prepare a notice of the association's program at Chautauqua for July 17th and 18th, secure railroad facilities to members if possible, print notices of such arrangements and furnish to the secretary for distribution. Motion adopted.

Also on motion of Mr. Ames voted that the treasurer be requested to prepare a notice of dues charged to each member and his credits, and furnish to secretary and the latter be requested to send the same to each member with the notice of the annual meeting.

On motion, meeting adjourned.

F. W. AMES,  
Secretary pro tem.

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#### MEETING OF BAR ASSOCIATION AT CHAUTAUQUA GROUNDS.

Devils Lake, North Dakota.

Chautauqua Grounds, July 18, 1902.

The bar association met in regular session with the Hon. Seth Newman, president, in the chair. The minutes of the last regular meeting were read and approved.



JAMES H. BOSARD.



It was moved and seconded that hereafter for secretary and treasurer one person be elected for that office, which motion was duly put to the association and carried.

It was then moved, seconded and carried that the by-laws of the association be so amended that the executive committee be able to vote by proxy.

The following resolution was then offered by Mr. J. H. Bosard, and it was recommended that the bar association present the same to the next session of the legislature:

WHEREAS, During the past ten years the population of the state of North Dakota has increased approximately 100 per cent and the business transacted in the courts of this state has increased in like proportion; and

WHEREAS, The salary paid to the several judges was fixed at a time when the business transacted in the courts of this state was not to exceed one-half its present volume; and

WHEREAS, We, the members of the state bar association, are in a position to first realize the extent of the work performed in the several courts and recognize the fact that as compared with salaries in other states considering the volume of business and ability required to dispatch it, the salaries now fixed by law are below the average and wholly inadequate as compensation for services rendered; now therefore, be it

*Resolved*, That we respectfully recommend to the legislative assembly of the state of North Dakota, a substantial increase in the salaries of the several district court and supreme court judges.

Which resolution, after a long discussion, was adopted.

It was then moved, seconded and carried that we proceed to the election of officers. The name of J. H. Bosard was presented to the association for president. And it was moved and seconded that the secretary cast the vote of the association for Mr. Bosard for president for the ensuing year, which was carried unanimously.

Mr. M. H. Brennan of Devils Lake was unanimously elected vice president. Mr. W. H. Thomas of Leeds was nominated for the office of secretary and treasurer by acclamation.

Mr. Newman, with a few appropriate remarks, stepped from the chair and requested Mr. Bosard to preside over deliberations of the association for the coming year. The association then rendered its thanks to Mr. Newman by resolution for his earnest and untiring efforts in behalf of the association of which he had been president for three years.

It was then moved and seconded that a vote of thanks be extended to Messrs. Blackwell and Burke for their earnest efforts in behalf of the association, which motion was duly carried.

It was then moved and seconded that a committee of three be appointed to investigate and report the works of the Torrens land title registration system, which motion was duly carried and the chair appointed Seth Newman of Fargo, John Burke of Devils Lake and F. W. Ames of Mayville.

It was then moved and seconded and carried that the officers of the association confer with the members of the supreme court and ascertain if the first day of each term of the supreme court at Fargo and Grand Forks could not be given to the association.

Moved and seconded that we adjourn.

W. J. BURKE,  
Secretary.

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JAMES H. BOSARD.

This eminent member of the bar of North Dakota was born in Osceola, Tioga county, Pennsylvania, on the 21st day of April, 1845, where he resided for several years.

His education was obtained principally in the common schools of his native township, and later he graduated from the state normal school in 1866. He taught school some time before as well as after his graduation.

Like all men who have risen to eminence, in his boyhood he had evinced an unconquerable love for the acquirement of knowledge, and that persistent industry which has always been such a marked characteristic of his useful life. In the fall of 1868 he commenced the study of law at Wellsboro, Pennsylvania, and was admitted to practice in 1870. In 1872 he was married, and in 1879 emigrated from Pennsylvania to what was then considered the "wild and woolly west," and located at Grand Forks, where he has resided continuously, and has been engaged in the practice of his chosen profession ever since.

In 1897 he took into partnership with himself, his son, Robert H. Bosard, who had recently graduated from the Columbian Law School and had been admitted to practice in the courts of the state, and under the name of Bosard & Bosard they are continuing the practice at Grand Forks.

**James H. Bosard** enjoys the enviable reputation of being one of the very best cross examiners in the northwest, and his name is a household word in this state.

He was one of the organizers and charter members and was the first vice president of the Bar Association of North Dakota, which position he held throughout the presidency of Mr. Newman, and was elected president to succeed him, which office he held for two years.

He has a host of warm friends and his society is courted. He is high minded, generous, gentle and unassuming, and beloved by all who have the honor of his friendship. He is truly a noble character and a representative American. He is still in the prime of his vigor, and his career is radiant with the achievements of the past, and the future promises for him a brilliancy commensurate with the years of his life.

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#### MEETING OF EXECUTIVE COMMITTEE.

FARGO, N. D., December 30, 1902.

Meeting of the executive committee of the Bar Association of North Dakota was called to order by President J. H. Bosard, at the offices of Newman, Spaulding & Stambaugh, with the following members of the said committee present, viz.: Hon. Seth Newman, Fargo; F. H. Register, Bismarck; James H. Bosard, Grand Forks; M. H. Brennan, Devils Lake, and W. H. Thomas, Leeds.

President J. H. Bosard stated the object of the meeting, viz.: The organization for the year's work, to talk over the legislation, etc., of importance to the bar association.

President Bosard stated that the committee on Law Reform, as well as the committee on Disbarment, were permanent committees, and stated that the former committee is composed of the following members, viz.: Hon. Seth Newman, Hon. N. C. Young and Mr. S. E. Ellsworth, while the latter committee was composed of Mr. George W. Newton, Charles F. Templeton and Roderick Rose.

Moved by Mr. Register that a special committee of three be appointed by the chairman to prepare a bill providing for an increase in the salaries of supreme and the district court judges, and for the presentation of the same to the legislature at the session of



1903. Seconded by Mr. Brennan. The same having been put to a vote by the chair, was declared carried. Chair defers said appointment until after the noon recess.

Mr. Newman moves that the above matter as well as the proposed legislation with reference to holding terms of the supreme court, be referred to the same committee which the chair is to appoint. Seconded by Mr. Brennan. The same having been put to a vote by the chair was declared carried.

Mr. Brennan moves that the matter of the use of the word "attorney" by nonprofessionals be referred to the committee on Law Reform, with the request that that committee report the same to the legislature and endeavor to have such a law passed. Mr. Register seconds the motion. Upon being put to a vote by the chair, it was declared carried.

Committee adjourned on statement of the chair to 2 p. m.

Committee reconvened at 2 p. m., with the members enumerated in the morning session present.

President Bosard names as committee for drafting bill for increase of salaries of supreme and district court judges and for the presentation of same to legislature at the session of 1903, also with reference to legislation in the matter of holding terms of the supreme court, the following gentlemen, viz.: Mr. F. H. Register, Bismarck, Mr. W. J. Burke, Bathgate, and Mr. David Bartlett, Cooperstown.

The secretary is instructed to advise the chief justice of the supreme court as to the personnel of the committee on Legal Education, Legal Qualification and Admission to the Bar. Said committee, having been appointed by President Bosard, is composed of the following gentlemen, viz.:

Professor A. A. Bruce, Grand Forks	.....First District
Mr. H. G. Middaugh, Devils Lake	.....Second District
Hon. Chas. A. Pollock, Fargo	.....Third District
Mr. James A. Austin, Ellendale	.....Fourth District
Mr. Lee Combs, Valley City	.....Fifth District
Mr. James G. Campbell, Dickinson	.....Sixth District
Mr. J. E. Gray, Grafton	.....Seventh District

Mr. F. H. Register moves that the bills of the members of the executive committee in attendance at this meeting be allowed and

ordered paid. Seconded by Mr. Brennan. Upon being put to a vote, the chair declared said motion carried.

The following bills were then paid by the treasurer of the association, viz.:

Mr. M. H. Brennan .....	\$14.30
Mr. F. H. Register .....	10.75
Mr. J. H. Bosard .....	7.00
Mr. W. H. Thomas .....	16.30

The bills of former secretary, Mr. W. J. Burke, were presented by Mr. Thomas, said bills being for \$24.05 and \$72, and Mr. Register moved that the bills be allowed and ordered paid. Mr. Brennan seconded the motion and upon putting the motion to a vote, the chair declared the same carried.

Moved by Mr. Brennan and seconded by Mr. Register that committee adjourn, and motion upon being put to a vote was declared carried. The committee adjourned accordingly.

W. H. THOMAS,  
Secretary.

#### MEETING OF EXECUTIVE COMMITTEE.

GRAND FORKS, N. D., August 28, 1903.

Meeting of the executive committee called for the evening at 8 o'clock was called to order and it being found that there was not a quorum present, meeting adjourned to be called by president. No business being transacted, Mr. Bosard, Hon. Seth Newman and secretary only being present.

W. H. THOMAS,  
Secretary.

#### MEETING OF EXECUTIVE COMMITTEE.

GRAND FORKS, N. D. September 15, 1903.

Meeting of the executive committee called to order by President Bosard, the following members of the committee present: President J. H. Bosard, Vice President M. H. Brennan, Secretary-Treasurer W. H. Thomas, Hon. Seth Newman, Mr. C. L. Bradley, Mr. H. A. Libby, Mr. D. Bartlett (proxy), Mr. V. Noble (proxy).

Secretary made his report to the committee of the showing made, etc., and on motion duly made and seconded, report was approved as read.

Report of treasurer was made and on motion duly made and seconded it was approved as read.

On motion duly made and seconded and carried, the secretary was instructed to notify Mr. R. W. S. Blackwell that the committee had adopted a resolution to call on Mr. Blackwell, former treasurer, for a statement, and accompany said call with correspondence had with several persons in reference to same.

On motion duly made, seconded and carried, the following bills were allowed and ordered paid, viz.:

Hon. Seth Newman, trip to Fargo (no meeting) \$ 8.00

W. H. Thomas, secretary ..... 100.00

Moved, seconded and carried that President J. H. Bosard appoint a committee on obituaries.

Moved, seconded and carried that secretary procure book to insert obituary and brief biography of members.

Moved, seconded and carried that we adjourn.

W. H. THOMAS,  
Secretary.

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### ANNUAL MEETING OF THE BAR ASSOCIATION OF NORTH DAKOTA HELD AT GRAND FORKS, SEPTEMBER 15, 1903.

Regular annual meeting of the Bar Association of North Dakota duly called to order by President James H. Bosard. The report of the secretary was then called for and the secretary read the following report which, on motion duly made, seconded and carried, was approved as read and ordered filed:

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#### SECRETARY'S REPORT.

LEEDS, N. D., August 28, 1903.

*To Mr. J. H. Bosard, President of the Bar Association of North Dakota, and the Members of the Executive Committee of the Same:*

GENTLEMEN: Your secretary, as you will know, was elected to the office of secretary on the 18th day of July, A. D. 1902, at

Chautauqua grounds, Devils Lake, North Dakota, and at that time he had never been acting on "the inside" in any capacity whatever, so far as the Bar Association of North Dakota was concerned, and at that time, too, the association had nothing at all with which to do business, in the way of records or anything else—all there was to it at that time was its administration and the list of members, our former administration having gone past all the rocks and shoals of organization and did its work well. While the present administration, so far as the secretary is concerned at any rate, felt that all was now smooth sailing, and even in case of storms that we were in midocean, with nothing to fear, but such has not been the case.

At the time your secretary took the office this association was composed of a membership of 127, and a cash fund, so far as we have been able to glean, of \$206.94. So far as the membership was concerned almost all of the members were in arrears from \$5 to \$15, but although but one new member, S. J. Radcliffe, and one honorary member, Judge J. J. Palda, Jr., have been added to the list of members, still the present administration has added a complete set of records, has collected from delinquent members the sum of \$185, paid all expenses of the association incurred by meetings of the executive committee, etc., and has a surplus of \$91.80 more than it had on hand last year when your secretary got the office.

Your secretary duly notified all members of all committees, whether standing or special, of their appointments, etc., and also did all in his power to get all members of the association in line, so far as paying dues are concerned, with what result you have already been advised.

Respectfully submitted,

W. H. THOMAS,

Secretary.

#### MEMBERS IN GOOD STANDING.

September 1, 1903.

Supreme Court Judges—N. C. Young, D. E. Morgan, John M. Cochrane—3; District Court Judges—C. J. Fisk, John F. Cowan, Chas. A. Pollock, W. S. Lauder, S. L. Glaspell, W. H. Winchester, W. J. Kneeshaw, L. J. Palda, Jr.—8;	
total honorary members .....	11
Per list attached hereto (following) .....	33

## DELINQUENT MEMBERS.

Per list attached hereto (following) ..... 71

## SUSPENDED FOR N. P. D.

Per list attached hereto (following) ..... 13

## DIED.

Per list attached hereto (following) ..... 1

Total list in association and out ..... 129

Deducting members suspended for N. P. D. and the one  
who died ..... 14

Present membership ..... 115

## MEMBERS IN GOOD STANDING.

J. G. Campbell	John D. Farrand
J. H. Field	R. M. Pollock
S. J. Radcliffe	F. H. Register
P. H. Rourke	O. J. Seiler
W. J. Clapp	Herman Winterer
Wm. Barclay	C. H. Stanley
E. Winterer	S. G. Moore
C. R. Gailfus	V. R. Lovell
Seth Newman	E. H. Smith
John Carmody	G. W. Newton
S. E. Ellsworth	C. S. Shippey
W. J. Anderson	W. B. Dickson
W. S. Stambaugh	Guy C. H. Corliss
David Bartlett	John Knauf
John F. Selby	F. W. Ames
H. A. Libby	W. H. Thomas
J. E. Robinson	

To the above list must be added the judges of the supreme court and the eight judges of the district court, who are ex-officio members of the association, and for that reason we have at the present time forty-four members in good standing.

## LIST OF DELINQUENT MEMBERS.

J. E. Campbell, Mandan.....	\$ 15.00
August Roberts, Fargo.....	15.00
W. H. Redman, Wahpeton .....	15.00
Leonard A. Rose, Fargo.....	15.00
S. F. Reese, Fargo.....	15.00
Roderick Rose, Jamestown.....	10.00
J. A. Sorley, Grand Forks.....	15.00
E. Smith-Peterson, Park River .....	10.00
W. H. Smith, Michigan City.....	15.00
R. N. Stevens, Bismarck.....	15.00
B. F. Spaulding, Fargo.....	10.00
Smith Stimmel, Fargo.....	10.00
Benj. Tufte, Cooperstown.....	10.00
H. R. Turner, Fargo.....	15.00
F. J. Thompson, Fargo.....	10.00
C. F. Templeton, Grand Forks.....	10.00
H. G. Vick, Bathgate.....	5.00
John S. Watson, Fargo.....	10.00
Geo. M. Young, Valley City.....	15.00
R. Goer, Devils Lake.....	15.00
Otto Grethen, Harvey.....	15.00
E. H. Hutchins, Devils Lake.....	10.00
M. A. Hildreth, Fargo.....	10.00
W. C. Hoopes, Carrington.....	5.00
E. C. Johnson, Fargo.....	15.00
Henry Kroegh, Fargo.....	15.00
D. J. Laxdal, Cavalier.....	10.00
A. B. Lee, Fargo.....	15.00
S. M. Lockerby, Valley City.....	15.00
C. E. Leslie, Carrington.....	15.00
J. A. Montgomery, Fargo.....	10.00
Jeff M. Meyers, Grafton.....	15.00
T. F. McCue, Carrington.....	10.00
D. G. McClay, Fargo.....	10.00
C. J. Maddux, New Rockford.....	15.00
Geo. Murray, Sherbrook.....	10.00
H. G. Middaugh, Devils Lake.....	5.00
P. M. Mattson, New Rockford.....	5.00

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Geo. H. Phelps, Fargo.....	10.00	
Ed Pierce, Fargo.....	15.00	
Geo. W. Poague, Fargo.....	15.00	
O. G. Barnes, Fargo.....	15.00	
A. J. Ames, Towner.....	15.00	
James M. Austin, Ellendale.....	15.00	
R. W. S. Blackwell.....	5.00	
W. J. Burke, Bathgate.....	5.00	
Tracey R. Bangs, Grand Forks.....	5.00	
M. J. Barrett, Minot.....	10.00	
John Burke, Devils Lake.....	5.00	
J. H. Bosard, Grand Forks.....	5.00	
R. H. Bosard, Grand Forks.....	5.00	
N. F. Boucher, Bismarck.....	15.00	
J. E. Bishop, Forman.....	15.00	
A. M. Baldwin, Cooperstown.....	15.00	
A. G. Burr, Bottineau.....	10.00	
F. Baldwin, Jamestown.....	15.00	
Alfred Blaisdell, Minot.....	5.00	
J. E. Blair (California).....	5.00	
Ida M. Crum, Fargo.....	10.00	
Lee Coombs, Valley City.....	15.00	
R. M. Carothers, Grand Forks.....	15.00	
H. C. Dupuy, Minto.....	15.00	
H. Doherty, Lisbon.....	10.00	
J. A. Dwyer, Hankinson.....	10.00	
J. F. Douglass, Grafton.....	15.00	
W. B. Douglass, Fargo.....	15.00	
J. B. Eaton, Fargo.....	15.00	
J. H. Fraine, Grafton.....	15.00	
C. N. Frich, Lakota.....	10.00	
Chas. A. Gram, Sheldon.....	15.00	
P. J. McClory, Devils Lake.....	5.00	\$825.00
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Total number delinquent members	71	
Total amount of arrearages .....	\$825.00	



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LIST OF MEMBERS SUSPENDED FOR NONPAYMENT OF DUES AND BY REQUEST.

S. L. Sheldon, out of practice.  
 John Shippam, out of the state.  
 H. G. Scott, Fargo, by request.  
 John P. Galbraith, out of the state  
 C. F. Hambrecht, out of the state.  
 J. A. Johnson, Fargo, by request.  
 Geo. A. Maglone, out of the state.  
 W. P. Miller, Fargo.  
 C. J. Mahnken, out of the state.  
 J. R. McLeod, can't locate.  
 W. H. Bartlett, can't locate.  
 Geo. B. Clifford, by request.  
 Martin G. Cushing, can't locate.

MEMBERS DIED DURING THE YEAR.

R. M. Dickson, Langdon.

The report of the treasurer was then called for, when the following report was read, and on motion duly made, seconded and carried was approved and ordered filed, viz:

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TREASURER'S REPORT.

Receipts per statement below.....		\$491.94
Disbursements per statement below.....	\$193.10	
Cash on hand.....	298.84	
		<hr/>
Total .....	\$491.94	\$491.94

RECEIPTS.

J. G. Campbell.....	\$ 5.00
J. H. Field.....	5.00
S. J. Radcliffe.....	5.00
Former treasurer .....	206.94
P. H. Rourke.....	10.00
W. J. Clapp.....	5.00
Wm. Barclay .....	15.00
E. Winterer .....	5.00
C. R. Gailfus.....	5.00



Seth Newman .....	5.00	
John Carmody .....	5.00	
S. E. Ellsworth.....	5.00	
W. J. Anderson.....	10.00	
W. S. Stambaugh.....	10.00	
David Bartlett .....	15.00	
John P. Galbraith .....	10.00	
Jas. G. Campbell.....	5.00	
John F. Selby.....	10.00	
H. A. Libby .....	10.00	
J. E. Robinson.....	10.00	
John D. Farrand.....	5.00	
S. J. Radcliffe.....	5.00	
W. J. Clapp.....	5.00	
R. M. Pollock.....	5.00	
F. H. Register.....	5.00	
O. J. Seiler.....	10.00	
Herman Winterer .....	10.00	
W. H. Thomas.....	5.00	
Chas. H. Stanley.....	5.00	
E. Winterer .....	5.00	
S. G. More .....	5.00	
V. R. Lovell.....	10.00	
E. H. Smith.....	10.00	
Geo. W. Newton.....	10.00	
J. H. Field.....	5.00	
C. S. Shippey.....	10.00	
W. B. Dickson.....	5.00	
Guy C. H. Corliss.....	10.00	
John Knauf .....	10.00	
Total .....	\$491.94	\$491.94

## EXPENDITURES.

Paid Webster-Schultheis agency, Grand Forks N. D., for treasurer's bond, for the year end- ing July 17, 1903.....	\$ 5.00
Paid for printing circulars, etc., to Plaindealer Co., Grand Forks .....	4.25

Postage .....	.40	
Paid for one record book.....	.90	
Paid express on ledger.....	.65	
Postage, notices to delinquents, 1st notice.....	2.00	
Postage, notice to delinquents, 2d notice .....	1.00	
Paid expense for meeting executive committee at Fargo December 30th, A. D. 1902, as follows:		
J. H. Bosard, Grand Forks.....	7.00	
M. H. Brennan, Devils Lake.....	14.30	
F. H. Register, Bismarck.....	10.75	
W. H. Thomas, Leeds, and expense.....	16.30	
W. J. Burke, balance on salary and expense for year ending July 18, 1902.....	96.05	
Paid Grand Forks Herald for ledger, supplies, etc. ....	16.50	
Leeds News, printing .....	11.00	
Postage, 3d notice to delinquents.....	2.00	
Webster-Schultheis agency, for treasurer's bond for year ending July 17, 1904.....	5.00	
		\$193.10
Balance cash on hand.....		298.84
		<hr/>
Total .....		\$491.94

Dated at Leeds, N. D., this 28th day of August, A. D. 1903.

W. H. THOMAS,  
Treasurer.

I might state here that I have been utterly unable to get a statement of the account from former treasurer, Mr. Blackwell, and hence do not vouch for the above true and correct showing of the affairs of the association, but I do vouch for the fact that they are a true and correct showing of the affairs of the association since I have had them.

W. H. THOMAS,  
Treasurer.

The report of delegates to the American Bar Association was made by Andrew A. Bruce of Grand Forks. The report was oral, but was both entertaining and instructive, after which the president's annual address was delivered by President James H. Bosard.

It was then moved, seconded and carried that we proceed with the election of officers.

On motion duly made, seconded and carried J. H. Bosard was nominated president for the ensuing year and after suspension of the rules the secretary cast the ballot accordingly. The same being true in the case of M. H. Brennan and W. H. Thomas for secretary and treasurer only that the president cast the ballot of the association for Mr. Thomas.

Moved by Mr. Engerud and seconded by Mr. Hildreth that the executive committee procure suitable portraits of the late Judge Bartholomew and the late Roderick Rose. The same to be hung in a suitable place in the state capitol building at Bismarck and on being put to vote, the same was carried unanimously, after which the association adjourned.

W. H. THOMAS,  
Secretary.

#### MEETING OF EXECUTIVE COMMITTEE.

Grand Forks, N. D., Sept. 20, 1904.

Pursuant to call, the executive committee of the Bar Association of North Dakota met at Hotel Dacotah in the city of Grand Forks.

There were present at such meeting, the following members, viz: J. H. Bosard, president, M. H. Brennan, vice-president (by proxy to Mr. Thomas) H. A. Libby, Seth Newman, C. L. Bradley and W. H. Thomas, and there being a quorum, proceeded to transact its business.

The report of secretary-treasurer was read and on examination of the books and records was found to be correct and on motion duly made, seconded and carried was ordered placed on file.

The secretary then reported the following applications for membership, viz:

E. B. Goss.....	Bottineau
J. H. Wishek.....	Ashley
L. L. Twitchell.....	Fargo
P. G. Swenson.....	Hillsboro
H. W. Clyde.....	Ashley
H. E. Johnson.....	Velva
R. M. Carothers.....	Grand Forks

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John H. Lewis.....	Minot
Albert Besancon.....	Willow City
M. H. Brennan.....	Devils Lake
W. R. Garrett.....	Towner
L. J. Palda.....	Minot
N. A. Stewart.....	Williston
Andrew A. Bruce.....	Grand Forks
Thomas Baker, Jr. ....	Fargo
Dennis Hannafin .....	Bismarck
P. G. Johnson.....	Langdon
George A. McGhee.....	Minot
J. E. Burke.....	Velva
Nehemiah Davis .....	Minot
T. A. Curtis.....	Lisbon
V. Quackenbush.....	Pembina
Thomas H. Pugh.....	Larimore
Lawrence J. Wehe.....	Edmore

Upon motion duly made, seconded and carried, the foregoing list of names, with the exception of Lawrence J. Wehe, was accepted and each person in the list except as stated was duly elected and entitled to all the benefits of the association.

Moved, seconded and carried that the application of Lawrence J. Wehe with fee of \$5 which accompanied the same be returned to him.

Upon motion duly made, seconded and carried, the president and secretary of the association were authorized to prepare for publication, secure best possible bid, and have 750 copies of the proceedings of the bar association published and when so published to send a copy of said proceedings to every attorney in the state whether a member or not of the association.

There being no further business, on motion duly made, seconded and carried, the meeting adjourned.

W. H. THOMAS,  
Secretary.

## MEMORIAL AND RESOLUTIONS

### ADOPTED AT SPECIAL TERM REGARDING THE DECEASED MEMBER, HON. RODERICK ROSE.

Judge Glaspell of the Fifth judicial district called a special term of the district court Friday afternoon for the purpose of taking some action regarding the death of State's Attorney Rose.

The following members of the bar were present when the court convened: Fredrus Baldwin, Marion Conklin, S. E. Ellsworth, John Knauf, Alfred Steel, J. A. Murphy, Ormsby McHarg, E. M. Sanford, O. J. Seiler, E. W. Thorp, S. A. Wilder, W. A. Martin, Fred G. Kneeland, George Thorp and John W. Carr.

Judge Glaspell delivered the eulogy. He referred to the many commendable traits of the deceased and to the loss sustained to the bar by the death of its oldest member. Addresses were made by Attorneys Baldwin, Conklin, Ellsworth, Knauf, Steel, Murphy, McHarg, Sanford, Seiler and E. W. Thorp.

The court appointed a committee to prepare a suitable memorial and resolutions and when the committee reported ordered the memorial and resolutions entered on the records of the court and a copy engrossed and presented to the family of the deceased. The committee reported as follows:

May it please the court: The committee of attorneys appointed by your honor for the purpose of preparing some appropriate expression of the sentiment of this court and bar in reference to the decease of Honorable Roderick Rose, a member of this bar, respectfully submit the following memorial and resolutions:

#### MEMORIAL.

With feelings of deep sensibility and profound regret this court and bar have received intelligence of the decease of Honorable Roderick Rose, the oldest and most distinguished member of this bar, which occurred on the 10th day of September, 1903.

Not by seniority of years alone, but by his quiet dignity of deportment, benignity of demeanor and the almost filial reverence,

which the sturdy manliness of his character inspired in his professional associates, Judge Rose is entitled to be known as the "Father of the Stutsman County Bar."

The record of his services as the first judge of this court during a period of some eight years, marks him as a man of profound convictions of right and justice, and of a high sense of the duties and responsibilities of that exalted position. While he was ever just, impartial and fearless his was a compassionate nature readily touched by and quick to respond to the appeal of the weak and suffering. None knew better than he how to temper the sternness of the law with the mercy that arises out of a deep sympathy with human misfortune.

In resuming the practice of law, Judge Rose brought with him to this bar, the same sterling qualities that had marked his conduct upon the bench. While zealously guarding and defending the interests of his client, he was always ready to extend to his professional brethren those courtesies which do so much to soften the asperities of practice.

In all the varied phases of his contact with other attorneys, he was fair, honorable and obliging. His oral agreement had to him all the force and solemnity of a written stipulation and was invariably so taken by his brother attorneys.

He had a deep sense of the duties of life. In all his varied relations, whether as judge, counselor or citizen, he was always true to his own views of duty and firm in his devotion to principle; therefore, be it

*Resolved*, That in the death of Judge Rose, the community has been deprived of one of its most honored and useful citizens, the profession of one of its oldest and most distinguished members;

*Resolved*, That in testimony of our high appreciation of his life, character and public services, and his many virtues and distinguished merits as a citizen and friend, and the honorable and useful example they afford, this memorial be entered upon the records of this court;

*Resolved*, That we tender to the family and friends of the deceased our sincere condolence and sympathy in this their great affliction, and that the clerk transmit to the widow and family of deceased an engrossed copy of these proceedings;

*Resolved*, That as a further mark of respect, the members of this bar do attend the funeral in a body.

Dated September 11, 1903.

M. CONKLIN,  
S. E. ELLSWORTH,  
E. W. THORP.

Committee.

COUNCIL OF THE CITY OF JAMESTOWN TAKES ACTION REGARDING  
DEATH OF RODERICK ROSE.

At a special meeting of the city council Friday evening at which Mayor Severn, Aldermen Stone, Shurlock, Kurtz and McElroy being present a committee, consisting of Mayor Severn, City Attorney Thorp and Alderman McElroy, was appointed to draft resolutions regarding the death of Hon. Roderick Rose. The committee will report at the next meeting. It was also decided to attend the funeral of Mr. Rose in a body. Mr. Rose served as city attorney for the city and was mayor also. He drafted the original charter of the city and the sentiment at the council meeting seemed to be that too much honor could not be paid to his memory.

In the sketch of the life of Judge Rose, which appeared in the Alert Thursday, an omission of the fact that he had served three terms as mayor of Davenport, Iowa, was made. His popularity in that city was evidently very great for he was elected each time with handsome majorities despite the fact that he was on the democratic ticket and Davenport is overwhelmingly republican. He was also master workman of the A. O. U. W. of the World at one time and also grand master of the state of Iowa for the A. O. U. W.

The funeral will be held from the residence and will be under the auspices of the Knights Templar Commandery. The burial will be in Highland Home cemetery.

ANNUAL MEETING OF THE BAR ASSOCIATION OF  
NORTH DAKOTA HELD AT GRAND FORKS,  
SEPTEMBER 7, 1904.

The association met with the members of the bar of the state of North Dakota and the members of the supreme court in open court and participated in the memorial exercises in memory of the late Hon. John M. Cochrane, associate justice of the supreme court, under the auspices and in presence of which the following proceedings were had, viz:



JOHN M. COCHRANE.



**THE STATE OF TEXAS, JR., UNIVERSITY**

## IN MEMORIAM

JOHN M. COCHRANE.

Upon the convening of the Grand Forks session of the September, A. D. 1904, term of court, on the forenoon of September 20th, after the opening of said term in due form, the following proceedings were had:

By Mr. Justice Young:

Since our last term, this court and this state has sustained a great loss in the death of our associate, Judge Cochrane. His great service to the state as a citizen, and his long and distinguished career at the bar, as well as his relation to this court at the time of his death, make it altogether fitting that his memory should be cherished and honored. We have, therefore, set apart this, the opening day of this term, for that purpose, and an opportunity will now be given to his associates at the bar, and others, to offer their tributes of respect and to present resolutions.

Judge Guy C. H. Corliss said:

*May it please your Honors:*

Compared with many of the courts of the nation this tribunal is only in its infancy. A decade and a half constitutes the term of its existence, and yet within that period two of its judges have gone the way of all mortal flesh; one of them, Judge Bartholomew, scarcely declined into the vale of years; and the other, our more recent loss, standing upon the very summit of human life. As we consider these things, and remember, too, that death swept them both into the infinite mystery as a tornado bursts out of the calm of noonday without warning, or an avalanche leaps from the stillness of the mountain side without premonitory sign, we are constrained to echo the thought of Burke when, prostrated by grief at the death of that son of such promise, he cried out in the agony of his soul: "What shadows we are, and what shadows we pursue."

In less than twelve hours from the time he entered his home, his mind full of plans for the future, which he unfolded to her who

was nearest to him, the great heart was cold, the large brain was still, the eloquent lips were silent, and that personality which loomed up in the public mind as no other personality in this state, had passed forever from human view.

Judge Cochrane, whom we all expected to greet here today upon this bench, has laid aside the burden of this life and gone away into that far off country visible only to the eye of faith. And so instead of greeting him here and addressing our arguments to him as a member of the court, we are assembled to express our love for him, our deep sense of loss at his death, and to place upon record our estimate of him as a man, as a lawyer and as a jurist. It is altogether fitting that we, the members of that profession which he embraced and followed with such distinction, should do this; fitting that we should do it at this time, a session of the court, and in this place, the temple of justice, and in the presence of the supreme tribunal of the state he so recently adorned and honored.

It is also, if your honors please, appropriate that there should be a pause in the activities of this bench while a merited tribute is paid to his memory. With us all this will be no perfunctory task, but only a labor of love; for he obtained and kept to the very last hour of his life a firm hold upon the affections of every member of the bar. No other lawyer in this state was more universally or more deeply beloved. But how inadequate is aught we may say, aught we can say, to present to the minds of those who knew him not the man as he was. We may eulogize him; we may take the full measure of his remarkable intellect and of his great heart; and yet how paltry it will all seem when we turn from the words we utter to our remembrance of the living man. An hour or two of speech for forty-five years of existence marked by notable achievements, by a brilliant display of the intellect and by the exhibition of extraordinary generosity of heart. It seems almost like mockery. Words cannot repaint the hues of sunset after the cold gray of night has settled upon the horizon; and after the beauty and splendor of a complex and brilliant life such as his has died away in the west, who, though prompted by the deepest love, dare essay to restore the rich coloring of that life? Though he should exhaust the resources of human speech, he must nevertheless wholly fail. And, therefore, were it not for those who are to come after us, the generations that can know him only through our speech and the traditions of the people,

his most appropriate eulogy would be simply to name him. In the palace of Caesar, Enobarbus exclaims to Agrippa, "Would you praise Caesar, say Caesar: go no further." And so might we condense and best express his encomium by the single word "Cochrane," were it not for the generations that are to follow. That name would instantly suggest to all who knew him the whole man—heart, intellect, character, learning, temperament, achievements, and that indescribable something which distinguished him from all other men.

But to speak his eulogy by simply naming him is possible only with those who came into relation with him in life. When they are gone naught but tradition will remain, save as speech has left a permanent memorial; and we who loved him are unwilling to leave his fame to mere tradition, sure to be obliterated by the flood tide of future years. We would build to his memory in granite that the monument may endure to be seen across the coming decades by those who shall hereafter constitute an integral part of this great commonwealth.

Coming to this territory in 1881, about twenty-three years ago, he was for years before his death the acknowledged leader of the bar of this state. It is true that one of his brother lawyers might excel him in some one department, another might be spoken of as possessing a little more skill or strength in a particular direction, some faculty of the mind being more active or developed; but when it came to the totality of intellectual powers, the mass and force of his brain and the manifold phases of its strength, there is little doubt as to the rank he occupied. In my mind there was no doubt at all. It was and is my deliberate judgment that he had not his equal in the profession within the borders of this state. If he did not possess the sharpest legal discrimination, he could yet count it an advantage that he was not forever splitting hairs and running after refinements too subtle for practical use. His brain was so big that his intellectual vision, from the very nature of the case, could not be microscopic. Like all large masses, his mind moved slowly until he was thoroughly aroused, and then its action was rapid, but it was the speed of the cannon ball and not the swiftness of a dart. Its momentum then, obeying the well known law of physics, was tremendous, for there was velocity multiplied by the weight of his ponderous brain. And yet, if your honors please, he never seemed

to touch the top of his power. One always felt, so easy and congenial to him were great intellectual feats, that he had an ample reserve upon which he could draw at will as occasion should demand it. He always seemed to be saying to a part of his mental powers: "Rest, keep holiday, the exigency does not require your employment now."

His powers of speech were exceptional; I think I may truthfully say extraordinary. Not remarkably fluent until his mind had become heated by excitement, the words poured from his lips like a torrent when he was in the full swing of his eloquence. A redundant imagination, a heart whose fountains of deep feeling were easily stirred, sweeping the whole man along with a mighty tide and an exuberant diction,—these, under the impulse of his powerful brain, made him easily a great orator, unequalled in that respect by any of his professional brethren in the state. His last masterly argument was in this very court room, before a jury, in the defense of a famous homicide case, and what an argument it was! He was then a sick man, too sick for the burden of such a trial; and yet the mind asserted its supremacy and he rose to the demands of the occasion, displaying no trace of mental weakness, arraying his facts, marshalling his argument, hurling terrific invective, making wide incursions into fields of sacred and profane literature for illustrations and evoking the emotions of the heart with all his old time power, asserting anew his leadership in the contests of the forum. All who heard him then, and it was a great throng, for this building was packed to its utmost capacity—all who heard him then felt and acknowledged the spell of an unaccustomed enchantment. Strong and fluent in presenting an argument to the bench, there were others who might contest his supremacy there, but before a jury he distanced all competitors. His nature was so large that he was never entirely at home when the reason was the only faculty to be employed. He was most truly himself when heart as well as brain inspired and shaped his speech. Then it was he flew an eagle's flight about all others. He was cool and resourceful in the court room. He was never discomfited by an unexpected turn in the case he was trying. Every emergency found him in full possession of all his faculties. Like Napoleon, he became greater as the difficulties thickened; and, like him, too, his judgment on the spur of the moment as to what was best to be done at a crisis in the trial was

well nigh infallible. He could, therefore, try a case well with little or no preparation, when compelled to do so. And yet he made most careful preparation for trial when this could be done. His policy was that of Macbeth "to make assurance doubly sure and take a bond of fate." His trial briefs (and I saw many of them) were remarkable papers. Everything that could be anticipated was carefully studied out and set down, so that as little as possible should be left to the confusion of the battle. This was especially true in cases involving questions of medical jurisprudence. I doubt whether he had his superior in the nation in handling cases of that character. Against his exhaustive preparation, supplemented by his wide erudition along such lines, no doctor could stand on cross-examination who had not made equally careful preparation on his part. I have in mind a case of that character, his preparation in which is a type of the preparation he made in all such causes. It was a suit against a surgeon for malpractice in setting a comminuted fracture of both bones of the forearm. He prepared it for trial, and had intended to manage the defense in person in the court room. It so happened that the duty devolved upon me at the last moment. I turned to his brief, and there I found everything—the facts, the law and the medical aspects of the case all set down in their due order, and nothing whatever left to chance, except, of course, the unforeseen exigencies of the trial itself.

Back of this careful planning of the battle lay a wonderful mastery of men, so that, when his personal generalship supplemented the preparation he had made, he was practically invincible,—absolutely so in a cause possessing real merit. He knew men through and through; their weaknesses, their foibles, their vanities, and also their great and noble qualities; and he could play with a master touch upon the delicate and complex mechanism of their souls, sounding them from their lowest note to the top of their compass. In a stormy convention he could rouse enthusiasm to the highest pitch, eliciting the admiration and applause of even his political opponents in the contest. His whole being, mind, body, will and moral nature seemed to dilate when he was riding upon the turbulent waves of a stormy popular assembly.

With his great physique, his powerful voice, his torrent of speech, his wonderful control of large masses of men, and that courage which became more magnificent as the dangers and difficulties thick-

ened, he reminded me of Danton ; and like him, too, his heart was constructed on a colossal scale. I hardly dare state the full measure of his generosity lest I appear to do the greatest of injuries to his memory by exaggeration of speech. Many were the beneficiaries of it. It reached all classes ; it assumed every conceivable form. The grand total in money alone was a large sum, very large for a man of his means ; but it was not with money alone that he was lavish. He gave in the same spirit, and with the same free hand, of his time, his talents, his learning, his energy, his sympathy ; nay, more, he put aside his own ambitions to further the interests, the reputation and the success of his friends. How many men can point to such a record ? He was always fighting the battle of others, never his own. Generally regarded as the fittest man in the state for the senate, he never sought that position, although I know from his own lips that the honor would have been pleasing to him and that the life of a statesman would have been congenial to his tastes. He was always helping some one else to the senate ; and when his own name was suggested in connection with that high office and a movement was started in his behalf, it had only his half-hearted support, or rather, it did not have his support at all. It was not in his nature to be a self-seeker, and I am glad, and I thank God that he did not run after that exalted office by political methods ; but that he kept proudly on his way in the calm assurance that he lost no honor by not being chosen to represent this state in the highest branch of the national legislature. All who hear me know that his selection to that exalted position would have reflected as much honor upon the office and the state as upon himself.

But he served the state. Indeed he served it in the very highest walks of public service by aiding in the administration of justice in various capacities. Webster, in his ornate and classic eulogy on Story before the Suffolk bar, said :

"Justice is the great interest of man on earth. It is the ligament which binds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness and the improvement and progress of the race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures and contributes to raise its august dome still higher in the skies, connects himself in

name and fame and character with that which is and must be as durable as the fame of human society."

Judge Cochrane labored upon the temple of justice with usefulness and distinction. He labored there in four different ways. First, by the practice of his profession largely as an advocate in the courts. Second, by fighting without rest and without regard to personal consequences to maintain a high standard upon the bench throughout the state and to create a sound public sentiment in that behalf. Next, by what he did in and for the North Dakota law school, to which he was deeply attached, a work practically unremunerated; and, finally, by himself discharging the functions of a judge of our court of last resort, dying in the harness, the desk in his library at his home having upon it when he was so suddenly called away the manuscript of an opinion he was then preparing.

He was young in years, but he was old in what he had accomplished. I have already spoken of his professional career and standing. I only wish to say that he tried more important criminal cases than any other lawyer in the state. Indeed, few lawyers anywhere in the northwest could point to such a list or to such a record of success. Any tribute to his worth would be incomplete which omitted to mention what he did in the interests of a capable and upright bench; how he labored in season and out of season to take our judiciary out of politics. I know from his own lips that it was this part of his life's work that gave him the greatest satisfaction. And well it might. No man can serve the state in a way more vital to the public good than this. It brought him no personal advantage. It cost him time and money and made for him political enemies. But he persevered, and practically alone and single handed he did in this direction what no other citizen of the state could have done. What the fruit of this work has been and is in this judicial district is well known to all. It is republican in its politics, and yet its judges have been democratic since statehood, chosen as they should be with sole reference to their fitness and without any regard to party affiliations. What other man could have induced two republican conventions to nominate for the district bench two democratic lawyers against the determined opposition of republican aspirants?

Next, I would refer to his work in the law school. That work was characteristic of the man. He prepared most carefully for the hour's lecture; he often ran over the allotted time, and even after



that he would remain talking to a knot of students who gathered around him. In many other ways he did effective service for the school aside from what he did as an instructor, and the state will honor and remember him for it. The details cannot be elaborated here. The boys all knew they had in him a staunch friend; yes, that they had in him an approachable friend. At any time they could go to him for any kind of aid or service. And they all admired and loved him. How could they help it? What a tower of strength he would have been to that school and to the cause of legal education in this state if he could only have been spared with all his old time health and vigor to labor in and for it.

Having taken his seat on the bench less than two years before his death, he had not seen that length of judicial service through which alone can come the reputation of a jurist. But the opinions he wrote, his legal learning, and the known strength of his intellect, made it only a question of time when, if life and health had been vouchsafed to him, he would have taken high rank as a judge. I regard this as quite exceptional, for it seldom happens that a great trial lawyer becomes an eminent judge when removed from the atmosphere of strife to the calm of judicial work. I have in mind two or three noted instances in British judicial history where the very reverse was the case; where men who were eminent advocates did not rise even to the level of the average judge when placed upon the bench. Curran is acknowledged to be the first of Irish advocates, and no one thinks of disputing Erskine's title to that proud claim in England, and yet the former made a signal failure as master of the rolls and the latter as lord chancellor of England. Scarlett won more verdicts than any lawyer of his day, and yet did not shine as a baron of the exchequer. So that, when it can be said of Judge Cochrane that not only was he the most brilliant advocate of the state, but that he also gave undoubted signs that he would make an able judge, we have, indeed, paid a high tribute to his intellect.

I cannot refrain from referring to a few personal traits. He was a man of great simplicity. He never posed, he never did anything for effect; no one ever thought that he was acting a part nor was he at all solicitous about the impression he was making. At all times and under all circumstances he was just himself, a man unspoiled by success. So far from over-estimating his strength the exact reverse was the case. He was rigorously critical of himself

and of the work he did. While, of course, conscious that he was a man of power, he really failed to measure his true greatness. He loved children and they loved him. The most natural and characteristic picture he ever had taken was standing<sup>g</sup> bending forward, one of his little nieces upon his back, her arms about his neck and her head nestled close to his, and upon his face that broad, genial, matchless and inimitable smile, a smile unlike any other that I ever saw.

His friendships were deep and lasting. The friends he had and their adoption tried he grappled to his heart with hooks of steel.

No man ever had a more faithful, more loyal and a more unselfish friend than he was to me. I could stand here an hour and narrate the instances in which he thought of me first and of himself only second, or, rather, not at all.

He was a prodigious reader. His magnificent library, miscellaneous and legal, was in constant service. The result was that he was well informed on many subjects. His lectures and public addresses showed wide learning and sound judgment in applying his knowledge. The largeness of his nature was shown by the breadth of his sympathy. All classes and conditions of life were alike attracted to him. Not that he did not have his enemies. He was too positive and aggressive to agree with every one. But his enemies admired and respected him. They acknowledged his genius and the greatness of his heart. He was utterly incapable of a mean or cowardly act. His faults were all the offshoots of his virtues carried to excess.

All know of his beautiful home life, and he loved his home. There was his great library; there was the devotion of his wife, and there, too, was the devotion of one who a stranger in blood, loved him with a depth and intensity seldom felt by a sister for a brother.

His nature was so complex and rich that I find it eludes and defies all attempts at analysis. It was at bottom a religious nature, for his feelings were deep, strong and tender. I do not know what his theological views were. He never talked with me on that subject. He was very reticent about it. But judged by the supreme test, the parable of the Good Samaritan, Judge Cochrane was religious through and through. Perhaps he saw the folly of trying to solve problems that lie beyond human ken, and he therefore never dogmatized. I fancy that in the sanctities of his soul he could say "Amen" to the grand rebuke of the Quaker poet to theological pride:

“Who fathoms the Eternal thought,  
Who talks of scheme and plan.  
The Lord is God: He needeth not  
The poor device of man.”

On Sunday last I visited his grave in Lakewood cemetery, where he lies by the side of his mother, whom he loved with an unspeakable love. It was sunset, but to me his sun had not set. I could not bring myself to feel that he had gone. To me he was not there, and I cannot yet, quite yet, bring myself to realize that he is no longer with us. I seem to be with him just as of yore; in the office where we worked together, in the country where he loved to drive, in the court room where he won his fame, in the library at his home where he labored so long and where I have spent so many pleasant hours with him; nor shall I ever be willing to lay in the grave this great and noble man and friend.

Judge Amidon said:

*May it Please the Court:*

After this full, fitting and scholarly tribute to the memory of the man whom we have convened here to commemorate, delivered by one who knew him best and was most intimately connected with him, nothing new can be said. No one may hope to speak to the subject that has been covered by Judge Corliss' address and add to it in substance or in adequacy of expression. But we have come here, not so much to adequately express our thoughts or our feelings in regard to this good man, as to pay our individual tribute to his memory. For those who knew him, we can add nothing by what we say here. We cannot hope to convey a larger or stronger impress surely than he conveyed by his simple, strong, kindly life. It is for us and those who come after us, rather than for him, that we are here assembled.

The best tribute to his memory is the plain and simple truth. Nothing would have more quickly moved his fine scorn than unmeasured eulogy or fulsome praise. He was simple and true, and wished to stand before men, and I believe would wish to front the future as he was; not smoothed down and polished out until the distinctive features of his character were effaced. That was not the quality of the man. He lived simply. He thought strongly. He did not wish to pass for that which he was not. He was willing

to stand with the strong, simple, kindly features of his character conspicuous in his memory as they were in his life.

Mr. Cochrane belonged to an order of lawyers that is rapidly passing. The momentous changes that are taking place in our industrial life are working a transformation in the legal profession. A generation ago a great lawyer drew his clientage from every walk of life. He represented no special interest and no class of interests. He was the servant of all, but he was dependent upon none. His thought was as large as the community in which he lived. His sympathy rested upon the common sympathies of man. Today all that is passing. We are living in a period of special interests. The stupendous concentration of industrial life is building single enterprises that overshadow in importance the state and almost the nation. These special interests require and demand for their service the very best legal talent. They have the means to secure that talent. Our intense commercial life makes our profession responsive to such calls. What is the result? The young lawyer the moment he demonstrates that he possesses great talents receives an invitation to accept a general counselorship for one or another of these special interests. In this way he is withdrawn from the common profession. His thought is narrowed to the special interests which he serves. His sympathies are confined to the single client whom he represents. He is no more seen in the common forum of the people. I am not speaking in criticism, be it understood. I am simply speaking history, speaking the facts as they exist. Now, the legal profession throughout our national history has been the recruiting body of our public service. It is so by virtue of the fact that it is its business to take the case of another, formulate and adequately express it. Whatever depletes that profession depletes the public service. I need not develop this thought to any greater length. It is one of the conspicuous features of our public life. Why I refer to it is to bring out one of the features of Mr. Cochrane's character. He was a lawyer of the old school. He drew his clientage from every walk and condition of life. He worked for all. He felt for all. His intellectual outlook was as large as the community and the state in which he lived. He never had to consult his legal register before advocating any cause or any candidate. He never had a client, the withdrawal of whose support would have materially affected his professional career. He seemed always to hold a retainer for the common good. In this

state, he was general counsel for the public welfare throughout his entire career. I think I speak within the limits of perfect moderation when I say that no other lawyer in the state who was actively engaged in the practice of his profession took so prominent and influential a part in public affairs. The first time I ever saw Judge Cochrane to know him, was in the first republican state convention at Fargo. It was a theatre where he showed his fine talents at their best. It was a gathering in which matters were settled upon the floor of the convention; a turbulent, spirited, vital, eager contest. He was its chairman, and I think nobody who was there took a greater part in shaping its deliberations. I shall not refer to political matters. I shall simply refer to that part of our public service which he took for his special and peculiar province; the maintenance and elevation of the judiciary. No man who was there; no man in the state had as active and controlling a part in selecting the members of our first supreme court as Judge Cochrane. We owe it to him that we had from the very first a supreme court which gave the state a name and a standing throughout the legal and judicial life of the west.

Throughout his entire life, as Judge Corliss has already said, he devoted his best energy to securing the independence and maintaining the character of the judiciary. He was the friend of this court; the friend of those who occupied it from time to time, the advocate of their cause, the defender of the court upon all occasions. He honored it in his professional career, he sustained it out in the larger walks of life. He was true to the same doctrine here in local contests. He knew, as every lover of justice knows, that party politics has no more proper place in the selection of a judge than it has in the trial of a law suit. If I were to select the occasion where I would take Judge Cochrane's measure at its best, where all his splendid talents towered forth in the fullness of the stature of his manhood, I would take it in the republican state convention held in this city when he stood before his party and pleaded that it would adopt that clause in England's second Magna Charta, the Bill of Rights of 1688, wherein it was written that a judge shall hold his commission during good behavior.

All students of English institutions believe that the writing of that little clause in the Bill of Rights of 1688 marks the most important element in the unfolding of England's national life. On the two

hundredth anniversary of its promulgation the greatest judge upon the English bench stood before the assembled bench and bar of his nation and said: "There is no human being whose smile or frown, there is no government, tory or liberal, whose favor or disfavor can start the pulse of an English judge upon the bench, or move by one hair's breadth the even equipoise of the scales of justice." Every fibre in the being of Judge Cochrane would have throbbed and thrilled to that sentiment. To the permanency of judicial tenure he gave the best endeavor of his life, and until it is accomplished there will remain some part of his work for us all to do.

Mr. Cochrane was a big man before he was a great lawyer. He was fond of books, as the splendid library which he collected testifies. But he did not draw his nourishment from books; his strength came from men and affairs. That is the only source from which any great character can draw its strength. He never got his life bound in law calf. Who ever saw him in the trial of a case was impressed far more by the native strength of his manhood than by what he had learned. As has already been said, it was the emergency which called forth his powers, whether it was in a public convention or in the trial of a case. It was by his personality rather than study that he acquired success.

If I were to mention an attribute of his character which impressed me as much as any, it was his splendid liberality of life. He gave himself prodigally, bountifully, to others and for others. If we were to call the roll here today of the men who have entered our public service and who have honored that service, there would not be one of them who would not step forward and bear testimony to some act of personal helpfulness rendered to him by Mr. Cochrane. He did not seek his own. He gave to others. I believe he never sought an office, but there were few who have aspired to office who have not received strong and helpful aid at his hands. He was of very broad sympathies. He could not see a fellow man in trouble without wanting to help him. Most of us when a man is in trouble, first begin to ask how much he is to blame for being in the position which he occupies, and we mete out our helpfulness according to our estimate of his blameworthiness. It was not so with Mr. Cochrane. For him it was enough that a fellow man was in trouble. He would look after the blameworthiness after he got him out. He resembled

Lincoln in that particular. He could always see the situation **from** the standpoint of the man who was in trouble.

Judge Cochrane, as I said, was a big man before he was a **great** lawyer. His manhood has made as large an impression upon **those** who knew him, I believe, as his legal standing made upon the **pro**-fession. He was true to his duties to the state, true to his **duties** to the profession to which he belonged, true to the solemn and **high** trust which he assumed as a member of this court. I rejoice **that** his life was crowned by a position upon this bench which published his merits to the world in a way which the simple practice of his profession could not have done. I am glad to be here to add **my** tribute along with the others of the profession to his memory. He was a man whose career ought to be held in perpetual remembrance. We know how transitory the memory of the lawyer is, but we **can** at least write our esteem of him upon the records of this court **that** those who come after us, either in the judicial or legal life, may know of his worth and his character in the estimation of those who knew him best.

Rev. E. J. Conaty said:

*May it please your Honors:*

We meet today to honor the memory of Judge Cochrane, and it is in every way fitting that these exercises should take place on the scene of his most splendid activities and in the presence of the court of which he was a distinguished member.

The bench, the bar and the public await the unveiling of their hearts, but silence, deep and sacred, is the sole measure of our irreparable loss. The most that human lips can do, however eloquent, is to hold up his life as an example and an incentive.

I esteem it most fortunate that my experience at the bar and acquaintance with Judge Cochrane permit me to speak my gratitude for a friendship which continued from its inception to the hour of his death, and to testify to those great abilities which early gave evidence of richest fruition. He died before life reached its meridian, but not before he had impressed his thought and character upon the mind and the jurisprudence of this commonwealth. When we seek the secret of his success and the reason for the esteem in

which he was held by his fellow men, we find it in the incessant, the unflinching, the resolute industry—the labor which left nothing to chance or accident, nothing to intuition or even to inspiration, and which gave to his arguments and his decisions a logical force which compelled conviction and compelled assent. Labor consecrated his life as it consecrates all lives. It is labor that strengthens the intellect, that fosters virtue, that strengthens character, that preserves morality, and since heaven itself is taken only by violence, gives to man the crown of his eternal destiny, and Judge Cochrane was noted for his laborious life. A short time before his death, the last conversation I had with him after the honor conferred upon Mr. Winship, the twenty-fifth anniversary of the Herald's existence, I said to him, noting his apparent feebleness, "Why can't we go down to the lakes for a few weeks and put aside our troubles?" He said, "I can't. I have too much work, and I can't bring my library with me." When I consider his success I recall to mind the words of the illustrious John Adams, once himself president of the United States, when he heard that his son, John Quincy, had been elevated to that exalted office. He said, "He was always laborious, man and boy, from infancy." And as we read our country's history we find those that have been elevated to highest offices have exhibited this splendid virtue. Presidents have come from the tow path and the tannery, have come from the cobbler's bench and the farm, because their industry had marked them as men worthy of the public confidence. Men who are laborious are honorable and honest men. When we seek for wrong-doing we go not to those whose lives are devoted incessantly to good works. On the contrary we seek for it among those who, living in idleness, perhaps revelling in the results of ill-gotten wealth, exhibit humanity in its most repulsive form.

When Judge Cochrane's fame began to spread he was called to every part of the state, and wherever he went his talents won instant recognition and marked him for promotion. "Seest thou a man," says Solomon, "diligent in his business, he shall stand before kings. He shall not stand before mean men." And the hour came when Judge Cochrane was borne, amid the applause and approval of his fellow citizens, to the highest office in the gift of this commonwealth. I say it deliberately—the highest office that man can hold. Not because upon the judicial office depends the title to the executive; not because the court determines the constitutionality of



laws, or even the right of their own membership to that **position**, but because the judge is the one who is to readjust the **conditions** which have been disrupted and brought disorder to the world. **Law**, we know all of us, is a rule of action, and if sin had never **entered** the world order would have continued forever and earth would **have** been a heaven. But with sin came disorder, and it required **even the** son of God to rescue man from its consequences, and the **judiciary** is uplifted to produce in civil society that peace and harmony **which** is interrupted by the commission of crime or the violation **of the** rights of property, and hence the judge, after his elevation to **office**, which comes by a divine act through the people, is the representative of justice, of a divine power, and exercises an authority **which** defines the rights of men between themselves and even determines the awful question of human life. Under the influence of the **great** thought which permeated his mind our illustrious friend began to take deeper and stronger views of the great question of human existence. And at the midnight hour I remember his asking me, after a long conversation, "Do you believe those things that you have told me, those doctrines that you preach?" I told him they were the result of conviction and not of inheritance. As he turned to go away he said, "There is great strength—you must have great comfort and satisfaction in holding those views in regard to human conduct, and in regard to eternal justice." It was the last interview I had with him. I remember it with a deep, pathetic feeling. It was the last time I spoke to him. He and I stood alone down here in the south end of town, when almost all others had gone to rest, but so deeply were we interested we were loath to part, as if there were some premonition that we should never meet again on earth.

I do not point to any great physical work done by Judge Cochrane—and in this presence, in this intellectual atmosphere it would be sacrilege to consider his wealth or what his wealth had done. Mean men measure their fellow men by what money has accomplished. I do not depreciate the use and worth of money. The lawyer is entitled to his fee for his services, but he would rather win his case, if he be a true lawyer, and lose the fee, than to secure the fee and lose the case. The healer, the physician, wishes a reward for his services, but he would rather save his patient and lose his fee than lose his patient and get his fee. The minister of the Gospel has little use for money save when others need it more than he, but if

**he is true** to his divine calling he will prefer to save souls rather than **to save** money. And when we seek to form an estimate of character **we have** only to consider the full sweep of the world's history and **ask**, "What have we now that has not come of intellectual wealth?"

**The** historic cities of the world furnish evidence of this truth. **Pigmies** wander through the world of Pericles, amid the ruins of **the** greatest physical works that human art could construct, but the **thought** of Demosthenes and Herodotus, the philosophy of Plato and **Aristotle** are felt now and will be so long as human intellect survives **upon** this earth. Rome, the great law-giving nation of the world, **has** passed away so far as its physical power is concerned, and yet **the** Code Justinian and the spirit that animated that great people **in** their great days still survives, and one of the greatest of modern **men** expressed the same thought when he said, "I shall go down **to** posterity with the Code Napoleon in my hand." And it is because Judge Cochrane has lived in the eternal realms of thought that he has carried our souls—that we have come here today to pay him our soul's memorial—our tribute of affection and respect.

To me is difficult to say all that I feel. I have seen him in his early days, in the vigor of that splendid manhood which challenged admiration not less than the great intellectual powers which he exhibited. I have seen him struggling in the throes of the Grim Reaper, and my soul and heart went out to him not once, but twice, and he always seemed to think in some mysterious way that I held him back from the grave, and I feel it deeply because he had asked me more than once if I would be with him when he was dying, that his taking off was so sudden that I could not have shown again the depth of the friendship that I had ever felt for him. His last public appearance in this city was on an occasion when some of my friends did me some honor. I remember that night the kind words he spoke, and I shall cherish them all my life, and if it be that Divine Providence permits us to meet again, their memory will be with me beyond the grave, and I bear this testimony to him now and to his friendship, and bear it with a full heart, and I thank God that I am permitted, though he is not here to hear what I say, to repay, even in the smallest way, the many acts in word and deed that he has done to me during all the years that we have lived together. As his last days came he seemed to think more and more of the higher things. It is the logic

of his profession and of the judiciary to lift men up towards **truth**, and all truth is the reflection of the divine mind, and I **sincerely** hope and pray that though he did not on earth pursue the **processes** that others have in the search of light, that the almighty and **merciful** God has given to him to see, not through a glass darkly, but face to face, the full revelation of divine love.

Judge Templeton said:

*May it please the Court:*

I arise for a twofold purpose. First, to drop a sprig of evergreen upon the bier of a departed friend. Second, to pay a brief tribute to the memory of an able and distinguished member of our profession.

Sixteen years have passed since I first met Judge Cochrane. During the first half of that period he was engaged in active practice in the courts over which I had the honor to preside. The next six years (after my retirement from the district bench) and just preceding the date that he took his seat as a member of this court, we frequently met at the bar in the trial of cases—occasionally as associates, but usually as opponents. Though my social relations with him were not intimate, they were most friendly. I therefore had the best of opportunity for studying the man—for becoming acquainted with his personal characteristics and for estimating his abilities as a lawyer. It is no exaggeration to say that Judge Cochrane was large of heart and large of mind as he was large of stature. Of a kind and sympathetic disposition, ever ready to aid the weak and the oppressed, generous beyond description; his affection for children was remarkable. He was loyal to his friends; he was as true as steel. He would not speak words of praise in your presence and wag the vile tongue of slander behind your back. His faults (the few he had), and who that is born of woman has none?—all sprung from the kindness of his disposition and the geniality of his nature. He was a broad, a many sided man; he had a cultured mind. His search for knowledge was not limited to the study of the law. He traveled extensively in the fields of science and explored many a path in the realm of general literature. As a lawyer he stood in the front rank of the profession. I say it not in disparagement of those who are eminent, but in simple justice to him whose memory we today commemorate, I express it as my firm conviction.

tion that before disease had fastened its unrelenting grip upon him, John M. Cochrane was, all things considered, the leading figure at the North Dakota bar. In the art of cross examination, where so many fail, he stood above the average. He was exceptionally strong in the trial of jury cases; there his fine physique and impassioned eloquence weighed mightily and rendered him a most dangerous antagonist. He marshalled evidence with rare skill. At times his eloquence was of the highest order. In the court room upon all occasions he was an antagonist worthy the steel of the ablest and the best. He could launch the arrows of irony and sarcasm with telling effect, but their points were never dipped in the poison of malice. Though at times his words may have seemed severe, they were not prompted by unkind motives; his object was to unmask the wrong. He was a generous adversary, yet ever loyal to his client's interests. He was diligent and painstaking in the preparation of his cases for trial. He never appeared in court unprepared. He was well grounded in the principles of the law, and he was also familiar with the decisions of the court. In all matters pertaining to the profession his ideals were high. In the wisdom of God our brother has been taken from us. We will ever cherish his memory. The state has lost an exemplary citizen, the bar has lost one of its brightest ornaments, the bench has lost an able, just and upright judge. We mourn because our brother's pilgrimage here on earth is ended. It is fitting that we express our sorrow, for sincere sorrow is the highest compliment the living can pay the dead. But let us not forget this cloud of sorrow has a silver lining too, for we believe that—

"Death is the crown of life,  
Were death denied, poor man would live in vain;  
Death wounds to cure, we fall, we rise, we reign."

Tracy R. Bangs said:

"Ships that pass in the night, and speak each other in passing;  
Only a signal shown and a distant voice in the darkness;  
So on the ocean of life we pass and speak one another—  
Only a look and a voice, then darkness again and a silence."

Darkness and silence!

Darkness only to the eyes of those who remain, for to die is to learn to live, and until then one is but a "darkened guest in a darkened world."

Silence to those who harken only to audible sound. The rays of everlasting light, the duties and pleasures of citizenship in **Heaven** have come to him whose absence we mourn and whose memory we cherish.

While his life, his work, his words will live after him and speak to the minds of generations to come in even clearer notes than human voice could ere intone.

When the startling news was carried to the outer world that Judge Cochrane was no more, there came from the people of the state a moan of sorrow for the loss of one of its most distinguished public men, and from the people of the entire northwest, a wave of sympathy for the bereaved one at home.

He was always a public man, and his counsel highly considered and often sought in affairs of state. For more than twenty years, however, the courts of the territory and state furnished the main field in which he won renown—won not alone because of his forensic power, but because as well of his massive intellect, his broad mind and his unswerving fidelity to every trust in him reposed. Living in a state wherein conditions were yet unsettled, and where ability was not a necessary measure of political preferment—he steadfastly refused to join hands with mere politicians or even to be circumscribed by party lines when civil morals were involved. His friends at times looked for some small revenge to be undertaken, but their fears were groundless, for his very independence gave him strength, and by sheer force of character he compelled recognition of his abilities.

He was great, not because of political influence—he was greater than political influence.

Started at man's estate upon the serious journey of life with mental capabilities of the highest order, with disposition colored only by the sunbeams of geniality, tongue touched by the fire of eloquence, ambition limited only by the bounds of human achievement in the line of his chosen profession, combined with physical force and energy that knew no bounds, he, as a young man, stood the ideal clay from which to shape a mighty man.

Cultivating the talents so generously bestowed, by study, precept and practice—each grace of mind and heart nourished in the soil of good citizenship and watered with the dew of high ideals—we find him in early middle life with character moulded into har-

**monious** completeness, a past to feel proud of, a future glowing **bright** with the promise of greater work yet to be accomplished—a **mighty** man.

Standing thus in his magnificent physical stature and towering **mental** strength, he was indeed a commanding figure. His life's **work** is done; suddenly in the midst of a busy life, the mysterious **voice** was heard and he followed "Up the radiant peopled way, that **opens** into worlds unknown"—leaving life's struggle with its pains **and** sorrows, its fleeting joys, its promises and disappointments, to **vest** himself in the rich robes of eternal life.

When he reached the ferry to which we are all driven, I doubt **not** but that the silent boatman bowed his head in recognition of his precious charge, and, guiding his bark safely through the shoals **and** rapids that lie between this shore and that, placed the immortal soul of John M. Cochrane in the beautiful shade of the enchanted groves of paradise, where it awaits the coming of the sanctified spirit of that noble woman—his helpmeet on earth.

W. F. Ball said:

*May it please your Honors:*

To one who knew him as well as I did, it is a pleasure, though one mingled with much of sorrow, to have the opportunity under circumstances such as these, to say a few words of tribute to the memory of our departed brother. Sorrow at our loss—of which the occasion gives us fresh reminder; but pleasure in the knowledge that we are today paying our tribute to the memory of one of whom no man may truthfully say aught, touching any of the things which fellow men have the custom-given right to criticize, which can redound to his discredit.

An acquaintance with John M. Cochrane extending almost from the days of his boyhood to the day of his death; an acquaintance which speedily ripened into a friendship far more intimate than the mere ordinary friendship, coupled with the social relations which existed between our respective families, brought he and I together for years upon terms that were intimate indeed. Watching him develop from the mere lad starting out on his professional career into the matured and well-grounded lawyer, and then on to the exalted position he held as a member of this honorable court at the time he was called from us; counseling with, and perhaps sometimes advising him in the earlier of his professional days; trying cases

with him, sometimes on the same, and sometimes on opposite sides; occasionally sharing his outings with him—now upon the hunting fields of our own state, and again, in the winter season, in “the land of sunshine and flowers,”—all of these things, extending unitedly over a period of many years, and during all of which there was never a cloud of even smallest proportions on the horizon of our friendship, gave me a knowledge of the man, and an insight into his character whereby I may speak knowingly of him; and I speak with only sincerity and candor when I say that during my whole life, including an active practice of the law of now nearly forty years’ duration, I never knew the man, of high or low degree, to whom I gave more honest and sincere respect and admiration than I gave to our deceased friend, John M. Cochrane.

Broad of mind, great of heart, generous to a fault, practicing, not as a duty merely, but rather as a spontaneous result of a characteristic of his very nature, that virtue which is “the greatest of them all,” he was yet quick of impulse, and not always slow to anger. But it was the mean things of life, acts of oppression, of injustice, of malice and of corruption which quickest aroused his ire; and his indignation more often found vent at the wrongs done to others than at such done to himself. And as for himself, while he was, as I have just said, quick of impulse and sometimes easily roused, it was not in him to do a mean thing. I believe John M. Cochrane could hardly have done a really mean thing if he had tried, for his impulses were all noble, his aims all high, his motives all to the right. His relations as a husband, and head of a family, were too well known to all his friends, and are of too sacred a character to either require or permit more than mere mention by me at this time. But his sorrowing widow, his grieving household, his mourning friends without number, attest only too eloquently the great, the irreparable loss that came upon them all that fateful day not long ago when our friend received that final summons which, severing all earthly ties, called him from our midst.

Of John M. Cochrane it may be truthfully said: That in his private life he was a kind, loving, considerate and true husband; a faithful, ever-remembering friend; a helper of the needy and distressed; a doer of unobtrusive good; a law-abiding, law-loving and duty-doing citizen—and that in his professional life he was the wise, clear-seeing counselor, the conscientious advocate, opposed to all

wrong, fearless in championing the right, and absolutely true to every trust confided to him. To possess some of these characteristics is common; to possess a majority of them marks a man for commendation by his fellows; to possess them all is rare indeed, and makes the man thus fortunate stand out as a beacon light on a high hill, for the safe guidance of those striving to good and honorable place among their kind.

Cut down in what should ordinarily have been but the very beginning of the prime of his life; taken from loving wife and family, leaving hosts of sorrowing friends behind; there is yet something of solace left to mourning ones in the thought that his death, coming when and as it did, doubtless relieved him of much of suffering and pain which would almost inevitably have followed the course of the bodily ailment which had for long been sapping his life away. And while at first poor frail humanity may be disposed to wonder that the infinitely All-Wise should thus cut down, at the very threshold of its prime a life capable of so much usefulness, yet, when all is considered—when we fully realize our own utter blindness as to the future, and that an impenetrable veil hides, and must always hide from us that which might have come to pass had things been ordered differently, we can have the more heart to say: "Thy will, not mine, be done"—and can approach nearer to an abiding belief that, after all, our destinies are safest in the hands of "Him who doeth all things well."

Mr. Hildreth said:

*May it please the Court:*

In the briefest possible manner I desire to pay tribute to a great advocate and friend. As the traveler wends his way through the great galleries in one of the famous capitals of the old world he finds himself entranced as amongst the masterpieces he gazes upon one called "The Unfinished Picture," and yet there is enough in the handiwork, and in the background, in the simplicity of outline, in the shadow of the cloud and bright light of the sunshine, to entitle the unfinished picture to a place in the hall of fame amongst the great handiwork of the masters' art. So, today, we are here to pay tribute to a great advocate and to one whose work was unfinished. We remember him as the genial, whole-hearted fellow who could reach down and stand for the lowest and



poorest mortals. His eloquence was for the right and just. And then we remember him in his work, brief and yet fairly well started, as a member of this great court. Unfinished as a jurist and yet sufficient in its background to clearly indicate that if length of days could have been in his right hand, unequalled riches in the realms of jurisprudence would have been in his left hand. We remember him also that in this age of gold his knee never bowed to the power of money. And now that this great soul has passed beyond the purple hills, beyond the utmost reach of human help or word, it is meet and just that we should pay this tribute to his character.

Mr. Newman said.

*May it please the Court:*

Personally I can add nothing to the tributes which have been paid to the memory of Judge Cochrane at this time. I can only say that the great, noble, generous, sympathetic manliness of his nature—that element of character which made him the brother of all men, which tied him to the hearts of all who knew him, and which will render his memory enduring through this generation and the future, among those who came within the genial influence of his kindly impulses, towers far above all that has been said, all that may be said, all that can be said of him here today, and stamps him a great, true, noble man. I desire, if the court please, at this time to present a slight testimonial of respect from the bar of Cass county and ask that it be spread upon the records of this court as a testimonial to the memory of Judge Cochrane:

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#### CASS COUNTY BAR ASSOCIATION.

*The Bar Association of Cass county unites with the brethren of the profession throughout the state in deploring the death of the Hon. J. M. Cochrane, late justice of the supreme court. We view his departure from our midst with profound personal sorrow, and extend to his beloved and devoted widow our deepest sympathy in her bereavement. He was a man of such sterling and unusual qualities both of heart and of mind that to know him was to love him. His success at the bar was marked, and was attained by hard and unrelenting work. It was never achieved at the expense of honor,*

*or the loss of self respect. He loved to win, but not enough so to be willing to use unfair or unworthy means. He was a hard fighter, resourceful, strenuous, brilliant, but his methods were beyond dispassionate criticism. He was distinguished for his diligence, his love of investigation, his pursuit of the growth of legal principles as he untiringly traced their development through multitudes of decided cases. He ascended the bench in the prime of his manhood, and we hoped that, relieved from the arduous and exciting labors inseparable from active practice, he might regain health in the performance of the high duties to which he was thus called. His judicial career, though brief, demonstrated the possession of an open mind, a strong, intellectual grasp of legal principles, ability to discriminate between the specious and the meritorious, patient research, absolute impartiality, unquestioned integrity. There was an unwonted charm in the childlike simplicity of his character. He was untouched and unstained by greed. His professional earnings were large, but they were like leaves and water. His generosity knew no bounds. His impulses were all generous and good, and he gave them freest rein.*

*We place on permanent record this memorial of our admiration for the brilliant and successful lawyer and advocate, our esteem for the judge, and our love for the man.*

SETH NEWMAN,  
V. R. LOVELL,  
JNO. S. WATSON,

Committee.

Fargo, North Dakota, September 15, 1904.

On behalf of the bar association of Cass county, if your honors please, I ask that this memorial be spread upon the permanent records of this court.

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#### GRAND FORKS COUNTY BAR ASSOCIATION.

Mr. Bangs said:

On behalf of the Grand Forks County Bar Association, of which Judge Cochrane was a member from its organization, I ask to have the following resolutions spread upon the records of this court:

Resolutions adopted by the Grand Forks County Bar Association at the special meeting held July 21, 1904, at Grand Forks, North Dakota:

*Whereas, The hand of death has been laid upon the Hon. John M. Cochrane, late justice of the supreme court of the state of North Dakota, and formerly and for many years a member of the bar of Grand Forks county, and deeming it fit and proper, as a mark of the high esteem in which we held him, that a memorial be entered upon our records, there to be preserved, now, therefore, be it*

*Resolved, That we, who through long and intimate association with him as our fellow citizen and as a member of our profession, had come to know him well, hereby express our high estimate of him as a man and a lawyer. His knowledge of the principles and the practice of law was profound and accurate, but his mind was too broad and active to rest content with the exploration of any one field of human knowledge. He was a scholar of generous and varied culture. He was a close and discriminating student, not only of the science of jurisprudence but of other allied sciences and of the liberal arts. In addition to his varied learning, and as a crown of it all, he possessed in a high degree the divine gift of eloquence. As a practicing attorney he was ever fair to his opponent, to litigants and to the court. As a judge he was broad, tolerant and impartial. Taking him all in all, he approached closely the ideal of an advocate and a judge.*

*As a citizen he was fearless in the assertion of his rights and the rights of his fellows, and his eloquent voice was often heard on public questions and always in support of the pure ideals of popular government. As a friend he was loyal to the end, large hearted and kind.*

*In his death, therefore, the state has lost a noble man, an upright citizen and a great jurist; we, his associates, a true friend; and the legal profession, a distinguished leader.*

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#### STATE BAR ASSOCIATION.

Mr. Bosard said:

*If the Court please:*

I have been acquainted with Judge Cochrane ever since he moved to Grand Forks, a period of more than twenty years, during which time I have practiced law at this bar; and I join in the tributes that have been paid to him by his associates in his profession, but I am here on this occasion to speak particularly for the Bar Association of North Dakota:

*The members of the Bar Association of North Dakota on this appropriate occasion give tribute to the memory of John M. Cochrane, the lawyer, whose love of his chosen profession so inspired his active life that he attained such eminence at the bar as is accredited only to the great.*

*His industry and perseverance were such that his success was assured. His professional pride led him to venture often in his efforts beyond the powers of his bodily strength to maintain. His devotion to the law led him to expend his resources in gathering together the finest library in the state.*

*His general attributes were such that he became the head and front of the bar, and the people held him in such regard that he was elevated to a seat upon the bench of this court, a position which he very justly held to be one of the greatest honor.*

By Mr. Justice Young:

The resolutions which have been offered will be received, and the court will direct that they be spread upon the minutes of the court; and, as a further mark of respect, we will adjourn until 10 o'clock tomorrow.

Then the association in deference for the action of the supreme court after holding the memorial services in memory of the late John M. Cochrane, associate justice of the supreme court, also adjourned until the afternoon of September 21st.

Grand Forks, N. D., Sept. 21, 1904.

Pursuant to call and according to adjournment from Sept. 20, 1904, the Bar Association of North Dakota met in the court house in the city of Grand Forks, and was called to order by President James H. Bosard when the report of the secretary was called for, and Mr. Thomas then read the following, which on motion duly made, seconded and carried was adopted as read and ordered filed, viz:

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#### SECRETARY'S REPORT.

*To the President, Executive Committee and Members of the Bar Association of North Dakota:*

At the last meeting at Grand Forks, our association had thirty-three members in good standing, eleven of which were honorary, these being the eight district judges and three supreme court judges.

This year I have the pleasure to report to you that we have increased just exactly 100 per cent since the last meeting.

During the year twenty-two have been suspended under the by-laws for nonpayment of dues, and one has died, and still after this great inroad into our numbers, we are just twice as large as we were one year ago.

In our list of members may be found the names of many of the leading lawyers practicing in this state, and their interest in the work and the welfare of the association should be more heartily enlisted, thus enabling the association to carry out more completely the objects for which it was organized.

During the past year I have received copies of the proceedings of the following bar associations, viz: Michigan, Colorado, New Mexico, South Carolina, Associates of the Bar of New York City, Louisiana, Georgia, Tennessee, West Virginia, Alabama, Illinois, Iowa, Bar Association of St. Louis, Minnesota, Indiana, Virginia, Pennsylvania, Montana, Nebraska, New York, Wisconsin and a copy of the reports of the American Bar Association for 1903, and I regret that our association is not able to reciprocate by sending a copy of our own proceedings in exchange.

I trust that arrangements can be made this coming year so that we may have the proceedings printed.

I have had a great many requests for a copy of our proceedings from various state librarians and likewise from the librarians of many of the public libraries throughout the United States and in all cases, of course, I was obliged to send regrets. This ought not so to be.

I have done more than the usual amount of work during the past year trying to get everybody into line to appreciate the value and importance of a state bar association, but I regret that not in all cases do I feel that the objects for which I sought so earnestly, have been accomplished, for in many instances instead of enlisting the services of the member in behalf of the association, many have never paid any attention whatever to letters received from my office, and of course, under the by-laws, the only thing left to do was to suspend the member for nonpayment of dues.

As our association stands today, sixty-six strong, not a member is in arrears, all in good standing up to and including the 31st day of August, 1904.

I regret to report the death of the late lamented Hon. John M. Cochrane, associate justice of the supreme court of this state, also V. Quackenbush, and I recommend that a committee be appointed to present suitable resolutions upon his death.

No other fatalities have taken place among our members so far as I have been informed.

From the many letters which I have received from various sources urging our co-operation in the matter work to our mutual benefit, it would seem desirable that regular delegates be appointed from among our members to attend the annual meeting of the American Bar Association, so that we may secure the benefits of an accurate report of that representative body and co-operate more successfully in its work. Such delegates have been occasionally appointed from this association, in the past, but it is very seldom that we get a report from said delegate after his appointment.

The realization of the objects for which our association was organized depends to a very large extent on the faithful and efficient work of its standing committees. These committees should be stimulated to greater activity. Men should be placed on these committees who will not only *undertake* to do the work, but *who will be interested in the work and do it*.

During the past year I know of no work having been done by our committees.

In the matter of the complaint of L. J. Wehe, an attorney of this state practicing at Edmore, against one T. W. Morrissey, which complaint was received by me and promptly placed with the proper committee, I do not know that anything has ever been done, and so far as the complainant is concerned, all he knows, I suppose, is that the complaint has been received and placed in the hands of the proper committee, said information having been conveyed to him from my office.

I simply cite this instance as a sample of the facts as they are, in the hope that this may have a tendency to stimulate all committees to better efforts in the future, and not for the purpose of fault-finding or unduly criticising any one.

Now, if the members of this association would take a personal interest in it, and as suggestions of interest to this association or to the profession to which we belong present themselves, and the member would send such to the secretary, I am sure that that offi-

cer, whomsoever he might be, would be glad to see that these were promptly sent to the proper committees and these would receive a deserved attention, and then it would be but a short time until our association would be a power that would have to be reckoned with in all important matters in this state.

In the report of the last meeting of the Virginia association I found a great deal to comfort me as on that occasion the president called for a report from the committee on legislation and law reform and nobody answered; he then called for a report of the committee on judiciary and no one heard; then the report of the committee on legal education and admission to the bar was called for and silence reigned; then for the report of the committee on legal literature and no one said a word; he then called for the presentation of candidates for admission and no one appeared; the committee on grievances had nothing to say; he then wound up by asking for the report of the committee on international arbitration and even then not a soul responded; and still that association is large, growing and prosperous, and a power for good in that state.

I have received a letter from a friend of this association in the state of Tennessee to the effect that one Wm. Farr of that state claims "to own and to operate" an alleged institution which he has seemed pleased to call the "National College of Law," and that said Farr is offering the degree of LL.D. for the small sum of ten dollars; but he informs me further that this degree is not worth any such sum, and suggests that I advise the members of this association not to buy the same.

In conclusion, permit me, gentlemen, to thank you one and all for the uniform kindness and courtesy received at your hands during the past two years, during which time I have been your secretary and to Mr. J. H. Bosard, the president of this association, in particular, I desire to express my gratitude for the very kind, prompt and efficient co-operation at all times.

Respectfully submitted,

W. H. THOMAS,

Secretary.

The following treasurer's report was then submitted and on motion duly made, seconded and carried was adopted as read, approved and ordered filed, viz:

## TREASURER'S REPORT.

*To the Bar Association of North Dakota:*

Your treasurer begs leave to make the following report:

Cash on hand at last report.....	\$298.84
Cash collected account banquet, per list attached	93.75
Cash collected per list attached for dues, memberships, etc. ....	295.50
	<hr/>
	\$688.09

## DISBURSEMENTS.

Aug. 28-'03, cash paid to S. Newman, expenses exec. committee meeting at Grand Forks, N. D.....	\$ 8.00
Aug. 29-'03, cash paid Secretary W. H. Thomas for year ending August 31, 1903, and expenses.....	117.95
Sept. 10-'03, postage on notices of annual meeting 1903..	10.00
Sept. 12-'03, paid for circular letter (1,000).....	4.50
March 3-'04, refund to Judge Morgan, overpay account banquet .....	.25
March 7-'04, refund to J. E. Robinson, overpay account of banquet .....	.25
Dec. 24-'03, postage, circulars.....	2.50
Dec. 28-'03, paid Wm. Miller for printing circulars.....	3.50
Feb. 22-'04, paid postage on circulars re banquet.....	10.00
Feb. 24-'04, paid postage on circulars re banquet.....	2.00
Feb. 27-'04, paid A. J. F. Voigt, printing.....	19.50
March 1-'04, paid postage circulars re railway fare (1-3 rate banquet) .....	4.00
March 7-'04, paid A. J. F. Voigt, printing.....	6.00
March 23-'04, paid Pirie for banquet.....	72.50
Telephone to J. H. Bosard.....	.35
Telephone to Knox, re printing.....	.35
Feb. 12-'04, telephone Fargo, re banquet.....	1.05
July 18-'04, postage, notices to delinquents.....	1.00
Aug. 31-'04, salary to Secretary W. H. Thomas.....	100.00

September 1, 1904 .....	\$363.70
Balance on hand.....	324.39

Total .....	<hr/>	\$688.09
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## REPORT ON TORRENS SYSTEM.

Report of Chairman S. Newman of the special committee which was appointed by President Bosard, July 18, 1902, to investigate and report on the working of the Torrens system of registration of titles, etc., was then made and the report of the committee not being complete, it was moved, seconded and duly carried that the present committee be continued and that at the coming session of the legislature, they advise with the judiciary committee of the legislature as to the character and proper adaptation of any law which might be decided upon should the legislature deem it wise to adopt such law in that session. Said committee being composed of Mr. Newman, Mr. Ames and Mr. John Burke.

The association then proceeded to elect officers with the following result, viz: H. A. Libby, Park River, president; John Carmody, Hillsboro, vice-president; W. H. Thomas, Leeds, secretary-treasurer.

Moved, seconded and carried that the secretary carry out instructions of last meeting as to portraits and that Judge Cochrane be added to the list, after which the association adjourned.

W. H. THOMAS,  
Secretary.

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H. A. LIBBY.

Hiram A. Libby, one of the foremost lawyers practicing at the bar in this state, was born in Dodge county, Minnesota, forty-four years ago, and as is constantly shown in the history of America's successful men, Mr. Libby did not receive a college education in his profession, but was educated in the public schools of Minnesota, and afterwards in the university of Illinois.

After leaving school he began to wrestle with the knotty points and perplexities of Blackstone and Coke, and so assiduously did he devote himself to the task that he was admitted to the bar in 1882—at the early age of twenty-two.

Thoroughly educated generally and well equipped in his profession, he rose to distinction rapidly and was soon recognized as a leading member of the bar in the locality of his new home at Park River, where he has resided continually for more than twenty years and is now recognized as one of the leading lawyers of this state.



H. A. LIBBY.



During all the period of his residence in Park River, excepting two years, he has been the city's legal adviser and was the mayor of his home city for four years. He also served his county as state's attorney.

He enjoys a very extensive and lucrative practice in all the courts of the state and in the supreme court he has been exceptionally successful. It is probably true that he has tried as many cases as any other lawyer in the northern part of the state.

Mr. Libby is a hard and conscientious toiler in the intricate paths of his profession. With one of the finest law and general libraries in the state and gifted with extraordinary talent, the result of innate genius, he labors with untiring zeal and industry, which, together with his great congeniality and conscientiousness, has made his chosen profession a success financially and has accumulated a large amount of legal hearing.

He has been a member of the executive committee of the bar association of North Dakota from its organization until September, 1904, when he was chosen president.

He has a family of wife and three children and one of the most beautiful homes in the state.

In his home he is a model of kindness—a most loving and affectionate husband and father, and always ready to befriend the deserving needy.

### ANNUAL BANQUET.

The annual banquet of the association, held at Pirie's Hall, Fargo, on Tuesday evening, March 22, 1904, at 6:45 o'clock, was a great success, not only in attendance of members, but by the wives and sweethearts whose presence always adds tone and beauty to such an event, and in the high character of the responses to the toasts, and in the excellence of menu and the service.

The menu was as follows:

	Oyster Cocktail	
	Cream of Tomato Soup	
Olives	Salted Almonds	Wafers
	Planked Whitefish	Au Gratin Potatoes
	Roast Beef, Brown Potatoes	
	Egg Salad	
Imported Roquefort Cheese	Bents' Water Crackers	
	Coffee	

## TOASTS.

Toastmaster, Hon. J. H. Bosard, Grand Forks.

"The Lawyers and the Law," Mr. T. A. Curtis, Lisbon.

"Needed Legal Reform," Mr. J. E. Robinson, Fargo.

"The Junior Bar," Mr. A. A. Bruce, Grand Forks.

"The Bar Association of North Dakota," Hon. Seth Newman, Fargo.

"Our Ladies," Mr. C. H. Shippy, Hope.

"The United States: The Best Government in the World," Mr. W. S. Stambaugh, Fargo.

The secretary, in sending out his notices of the banquet to the members, had quoted the following from Burns:

"Some hae meat and canna' eat,  
And some wad eat who want it;  
But we hae meat and we can eat,  
So let the Lord be thankit."

and from the onslaught made on Caterer Pirie's repast, it was demonstrated that *all* could eat.

Mr. Bosard made an able toastmaster and certainly gave entire satisfaction in the trying position.

The responses to the toasts of unusual excellence, both in material and delivery, will long be remembered by those present, while the ladies with their beautiful array of apparel and adorned with exquisite jewels were the crowning ornament of the occasion.

## CONSTITUTION AND BY-LAWS

OF THE

BAR ASSOCIATION OF NORTH DAKOTA,

*As Amended up to and Including the Annual Meeting of the Association Held September 21, 1904.*

## CONSTITUTION.

## ARTICLE I.

The name of this organization shall be "The Bar Association of North Dakota."

## ARTICLE II.

The object for which this association is formed is:

First. To maintain the highest standard in the profession.

Second. To promote professional fellowship.

Third. To aid in securing good government.

Fourth. To keep inviolate the present high standard of the judiciary.

## ARTICLE III.

All members of the bar of this state, in good standing, shall become members of this association, who shall be accepted by the executive committee and shall have paid the sum of \$5 as a yearly fee, provided that all those persons who shall pay the fee and sign this constitution during the September, 1899, session of the supreme court, shall become members without any further act; and provided, further, that the judges of the supreme and district courts shall become members upon signing this constitution.

## ARTICLE IV.

The officers of this association shall be a president, vice-president, secretary and treasurer, who shall hold their office until the next annual meeting of this association succeeding thereafter.

## ARTICLE V.

The executive committee shall consist of the officers of this association and one person from each judicial district, who shall be appointed by the president.

## ARTICLE VI.

The duties of the officers of this association shall be such as usually devolve upon like officers in parliamentary bodies.

## ARTICLE VII.

The duties of the executive committee shall be such as may be from time to time imposed upon it by law.

## ARTICLE VIII.

This constitution may be amended at any annual meeting, by a majority vote upon amendments which have been suggested at a previous annual meeting thereof.

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BY-LAWS.

SECTION 1. MEETINGS. The association shall meet at least once in each year, at such time and place as shall be designated for that purpose by the executive committee. The secretary shall send notices of the time and place so selected, to each member, by mail, at least ten days before the date of the meeting.

SEC. 2. Each member shall pay \$5 annually, as dues, and when in default thereof for six months shall be dropped from the roll.

SEC. 3. The executive committee shall make all necessary arrangements for the meetings of the association and provide in their discretion for its entertainment, prepare programs of its proceedings, audit all bills against the association and perform such other duties as may be required by the association.

SEC. 4. The treasurer shall receive all moneys due the association and pay out the same on the order of the president and secretary, authorized by the executive committee and shall give a surety company's bond in the sum of one thousand dollars, the expense of the same to be paid by the association.

SEC. 5. These by-laws may be amended at any time, by a majority vote of the members present at any regular meeting of the association.

SEC. 6. The secretary of this association shall receive an annual salary of \$100.

SEC. 7. The committee upon Jurisprudence and Law Reform shall receive and consider from any member of the bar of the state at any time proposed amendments to the code, and shall at each meeting of the association report what changes, if any, have been made by the legislature since the last meeting, and any modifications of the rules of practice that shall have been made by the supreme court, and in addition to such reports shall recommend such changes in the code and in the practice as shall seem to said committee to be proper and advantageous to the end of securing a proper reform of the laws.

SEC. 8. The committee upon Legal Education and Admission to the Bar shall confer with and recommend to the faculty of the University of Law a suitable course of study to be pursued as a qualification for admission to the bar, and shall also confer with and recommend to the supreme court a standard of education and qualifications to be adhered to as a prerequisite to admission to the bar, and shall report in regard to such matters at each meeting of the bar association.

SEC. 9. COMMITTEE ON DISBARMENT. There shall be appointed by the president a committee of attorneys consisting of three attorneys which committee shall be permanent and which shall have the supervision of all complaints made to the association against members of the bar in the state. No such complaint shall be investigated unless substantiated by at least two positive affidavits of the facts constituting the conduct complained of, or one affidavit and documentary evidence to support the facts charged. Any person desiring to make or file any charges for the purpose of disbarment of an attorney, may deliver such affidavits or other evidence to the secretary or president of the association, whose duty it shall be thereupon to deliver the same to the disbarment committee. The committee shall then fix a day for the hearing of such proofs as may be produced, and it shall give the accused at least ten days' notice of such hearing and permit him to appear and produce before the committee any evidence he shall desire to submit. The investigation shall be made secretly and without any publicity whatever, except such as is necessary to procure any necessary evidence, and if the committee find no prosecution should be commenced, they shall



dismiss the matter and return the affidavits to the person from whom they received the same who shall thereupon return them to the party making the charges, without publicity. In case the committee find from their investigation that further investigation in court should be made, it shall be their duty to prepare and file in the office of the clerk of the supreme court an accusation in accordance with section 434 of revised codes.

#### LIST OF MEMBERS.

Anderson, W. J.	Grand Forks
Ames, F. W.	Mayville
Bradley, C. L.	Wahpeton
Baker, Thomas J., Jr.	Fargo
Bangs, Tracy R.	Grand Forks
Brennan, M. H.	Devils Lake
Besancon, A.	Bottineau
Bosard, J. H.	Grand Forks
Burke, John	Devils Lake
Burr, A. G.	Bottineau
Bruce, A. A.	Grand Forks
Burke, J. E.	Velva
Cowan, John F.	Devils Lake
Cochrane, John M.	Grand Forks
Campbell, J. G.	Dickinson
Carmody, John	Hillsboro
Curtis, T. A.	Lisbon
Clapp, W. J.	Fargo
Carothers, R. M.	Grand Forks
Corliss, Guy C. H.	Grand Forks
Clyde, H. W.	Ashley
Davis, N.	Minot
Engerud, Edward	Fargo
Ellsworth, S. E.	Jamestown
Farrand, John D.	Fargo
Field, J. H.	Dickinson
Fisk, C. J.	Grand Forks

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Gailfus, C. R.....	Rolla
Garrett, W. R.....	Towner
Goss, E. B.....	Bottineau
Glaspel, S. L.....	Jamestown
Hannafin, D. ....	Bismarck
Hildreth, M. A.....	Fargo
Johnson, P. G.....	Langdon
Johnson, H. E.....	Velva
Knauf, John .....	Jamestown
Kneeshaw, W. J.....	Pembina
Lewis, John H.....	Minot
Libby, H. A.....	Park River
Lovell, V. R.....	Fargo
Lauder, W. S.....	Wahpeton
McClory, P. J.....	Devils Lake
McGee, George A.....	Minot
More, S. G. ....	Buffalo
Morgan, D. E.....	Devils Lake
Newman, Seth .....	Fargo
Newton, George W.....	Bismarck
Pollock, R. M.....	Fargo
Pollock, Chas. A.....	Fargo
Pugh, Thomas H. ....	Larimore
Palda, L. J.....	Minot
Quackenbush, V. ....	Pembina
Radcliffe, S. J.....	Larimore
Register, F. H.....	Bismarck
Robinson, J. E.....	Fargo
Stambaugh, W. S.....	Fargo
Stanley, C. H.....	Steele
Selby, J. F. ....	Hillsboro

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Seiler, O. J.....	Jamestown
Stewart, N. A.....	Williston
Swenson, P. G.....	Hillsboro
Smith, E. H.....	Fargo
Shippy, C. H.....	Hop
Twitchell, L. L.....	Fargo
Thomas, W. H.....	Leed
Vick, H. G.....	Bathgat
Watson, John S. ....	Fargo
Winterer, H. ....	Valley Cit
Winterer, E. ....	Valley Cit
Wishek, J. H.....	Ashle
Winchester, W. H.....	Bismarck
Young, N. C.....	Fargo

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